

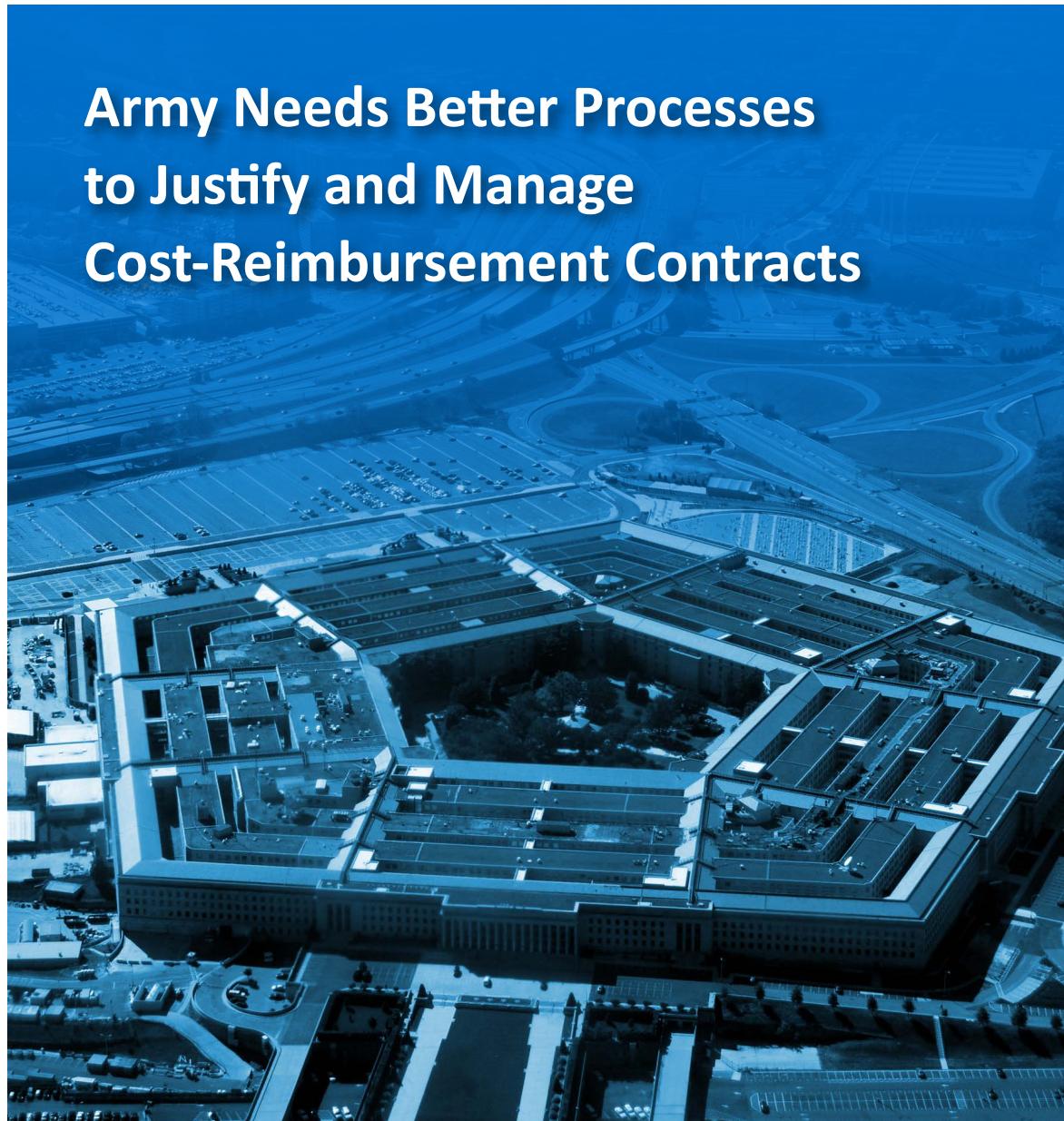


# INSPECTOR GENERAL

*Department of Defense*

AUGUST 23, 2013

## Army Needs Better Processes to Justify and Manage Cost-Reimbursement Contracts



INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

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# Results in Brief

## *Army Needs Better Processes to Justify and Manage Cost-Reimbursement Contracts*

August 23, 2013

### Objective

We are required to perform this audit in accordance with the FY 2009 National Defense Authorization Act, section 864, "Regulations on the Use of Cost Reimbursement Contracts." Our objective was to determine whether the Army complied with interim Federal Acquisition Regulation (FAR) revisions on the use of cost-reimbursement contracts by documenting that approval for the cost-reimbursement contract was at least one level above the contracting officer; that cost-reimbursement contracts were justified; how the requirements under contract could transition to firm-fixed-price in the future; that Government resources were available to monitor the cost-reimbursement contract; and that contractors had an adequate accounting system in place during the entire contract. This is the second in a planned series of audit reports on DoD compliance with the interim rule for the use of cost-reimbursement contracts.

### Finding

Of the 161 contracts reviewed, valued at about \$53.3 billion, Army contracting personnel at four sites did not consistently implement the interim rule for 107 contracts, valued at about \$10.5 billion. Contracting personnel issued contracts that did not follow the interim rule because they were unaware of the rule. As a result, contracting personnel may increase the contracting risk because cost-reimbursement contracts provide less incentive for contractors to control costs. We identified internal control weaknesses for implementing the interim rule changes regarding the use of cost-reimbursement contracts.

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### Recommendation

We recommend that the Assistant Secretary of the Army for Acquisition, Logistics, and Technology (ASA[ALT]) emphasize the importance of the FAR revisions to contracting personnel for the use of cost-reimbursement contracts; update Army guidance to eliminate the threshold for cost-type contracts and include the other three areas of the interim rule; consider issuing more hybrid contracts so that contract type can be selected on each task or delivery order; and establish better communication channels to identify opportunities to transition to firm-fixed-price contracts. We recommend that the Director, Army Contracting Command Redstone, establish procedures for contracting officers to document the possibility of transitioning to firm-fixed-price contracts each time a cost-reimbursement contract is used. We recommend that the Director of Contracting, Fort Huachuca Army Contracting Command - Aberdeen Proving Ground, reemphasize the requirement that contracting officers should determine that contractors have an adequate accounting system in place before issuing a cost-reimbursement contract.

### Management Comments and Our Response

ASA(ALT) agreed and issued the June 19, 2013, memorandum, "Implementation Directive for Better Buying Power 2.0 (BBP 2.0)." ASA(ALT) will also issue a Policy Alert to contracting personnel to emphasize the importance of BBP 2.0. Redstone agreed and will include procedures to document the possibility to transition to firm-fixed-price contracts in a Determination and Finding. Fort Huachuca agreed and included a requirement for assessing the contractor's accounting system to be in pre-award documentation. We consider these comments to be responsive. Please see the recommendations table on the back of this page.

## ***Recommendations Table***

Management	Recommendations Requiring Comment	No Additional Comments Required
Assistant Secretary of the Army for Acquisition, Logistics, and Technology		1.a, 1.b, 1.c, and 1.d
Director of Contracting, Army Contracting Command Redstone		2
Director of Contracting, Ft Huachuca Army Contracting Command – Aberdeen Proving Ground		3



**INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
4800 MARK CENTER DRIVE  
ALEXANDRIA, VIRGINIA 22350-1500**

August 23, 2013

**MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR ACQUISITION,  
TECHNOLOGY, AND LOGISTICS  
AUDITOR GENERAL, DEPARTMENT OF THE ARMY**

**SUBJECT: Army Needs Better Processes to Justify and Manage Cost-Reimbursement Contracts (Report No. DoDIG-2013-120)**

We are providing this report for your information and use. Of the 161 contracts reviewed, valued at about \$53.3 billion, Army contracting personnel did not consistently implement the Federal Acquisition Regulation revisions for the use of cost-reimbursement contracts for 107 contracts, valued at about \$10.5 billion. We reviewed contracts at four Army sites. We are required to perform this audit in accordance with the FY 2009 National Defense Authorization Act, section 864, "Regulation on the Use of Cost Reimbursement Contracts." This is the second in a series of audit reports.

We considered management comments on a draft of this report when preparing the final report. Comments from the Deputy Assistant Secretary of the Army (Procurement), the Executive Deputy to the Commanding General, Army Materiel Command, on behalf of the Director, Army Contracting Command-Redstone, and the Director of Contracting, Fort Huachuca Army Contracting Command-Aberdeen Proving Ground conformed to the requirements of DoD Directive 7650.3; therefore, additional comments are not required.

We appreciate the courtesies extended to the staff. Please direct questions to me at (703) 604-9077 (DSN 664-9077).

*Jacqueline L. Wicecarver*  
Jacqueline L. Wicecarver  
Assistant Inspector General  
Acquisition, Parts, and Inventory

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# Introduction

## Objectives

Our objective was to determine whether Army contracting personnel complied with interim Federal Acquisition Regulation (FAR) revisions regarding the use of cost-reimbursement<sup>1</sup> contracts. Specifically, we determined whether Army contracting personnel implemented the interim rule by documenting:

- that approval for the cost-reimbursement contract was at least one level above the contracting officer;
- that the use of the cost-reimbursement contract was justified;
- how the requirements under the contract could transition to firm-fixed-price in the future;
- that Government resources were available to monitor the cost-reimbursement contract; and
- that contractors had an adequate accounting system in place during the entire contract.

We also determined whether Army personnel were intentionally misclassifying contracts as firm-fixed-price to avoid the increased cost-reimbursement contract documentation requirements.

We are issuing separate reports for each Service, one report to include the Missile Defense Agency and the Defense Microelectronics Activity, as well as a summary report. This is the second report in the planned series of reports and includes contracts issued by the Army at four sites. The first report of the series, "Air Force Needs Better Processes to Appropriately Justify and Manage Cost-Reimbursable Contracts" (Report No. DODIG-2013-059), was issued on March 21, 2013. See Appendix A for the scope and methodology and prior coverage related to the objectives.

## Background

Section 864 of the FY 2009 National Defense Authorization Act, P.L. 110-417, requires FAR revisions regarding the documentation of decisions and approvals necessary

<sup>1</sup> We use "cost reimbursement" to describe any type of contract other than firm-fixed-price contracts throughout the report, such as labor hour and time and materials contracts.

before issuance of other than firm-fixed-price contracts and the DoD Inspector General to audit DoD's compliance with the changes within 1 year of policy issuance. Federal Acquisition Circular (FAC) 2005-50, issued March 16, 2011, implemented the required revisions on an interim basis. This interim rule was effective immediately and was not subject to public comment before issuance. FAC 2005-50 amended FAR Part 7, "Acquisition Planning;" FAR Part 16, "Types of Contracts;" and FAR Part 42, "Contract Administration and Audit Services." The final rule was published in the Federal Register on March 2, 2012, without significant changes that would affect our audit objectives. To promote savings in Federal contracting, contracting personnel should choose the appropriate contract type. See Appendix B for a copy of the interim rule, FAC 2005-50, issued March 16, 2011.

## **Interim Rule Requirements and Our Interpretation**

We divided our objective into five areas based on the interim rule. We needed to interpret parts of the interim rule for each of these areas to determine what we would accept as adequate documentation in the contract file. Contracting personnel were required by the interim rule to include the justification, approval, and transition areas of our objective in the acquisition planning documentation. For each of these areas, we accepted documentation anywhere in the contract file because some of the Acquisition Plans were completed before the interim rule. Contracting personnel were not required by the interim rule to document that adequate resources and an adequate accounting system were available specifically within the acquisition planning documentation.

### ***Approval***

Contracting personnel were required by the interim rule to obtain approval of a cost-reimbursement contract at least one level above the contracting officer. FAC 2005-50 states, "[t]he contracting officer shall document the rationale for selecting the contract type in the written Acquisition Plan and ensure that the plan is approved and signed at least one level above the contracting officer." Contracting personnel were required by the interim rule to document this approval in the Acquisition Plan. We accepted any documentation in the contracting files that stated the contract type was cost-reimbursement and was reviewed and signed by an Army official above the contracting officer as evidence of having met the interim rule requirement.

### ***Justification***

Contracting personnel were required by the interim rule to justify the use of a cost-reimbursement contract. FAC 2005-50 states:

[a]cquisition personnel shall document the acquisition plan with findings that detail the particular facts and circumstances, (e.g., complexity of the requirements, uncertain duration of the work, contractor's technical capability and financial responsibility, or adequacy of the contractor's accounting system), and associated reasoning essential to support the contract type selection....

Contracting personnel were required by the interim rule to document the justification in the Acquisition Plan. We determined that Army contracting personnel followed the interim rule by completing a Determination and Finding memorandum on contract type for inclusion in the contract file or included a discussion of research and development efforts with results that cannot be precisely described in advance.

### ***Transition***

Contracting personnel were required by the interim rule to document the potential of cost-reimbursement contracts to transition to firm-fixed-price contracts.

FAC 2005-50 states:

For each contract (and order) contemplated, discuss the strategy to transition to firm-fixed-price contracts to the maximum extent practicable. During the requirements development stage, consider structuring the contract requirements, *e.g.*, contract line items (CLINS), in a manner that will permit some, if not all, of the requirements to be awarded on a firm-fixed-price basis, either in the current contract, future option years, or follow-on contracts.

We interpreted this section of the interim rule to require an explanation of the potential to transition to a firm-fixed-price contract or a justification as to why the particular effort will never be able to transition to a firm-fixed-price contract. Contracting personnel were required by the interim rule to document this strategy in the Acquisition Plan. In addition to areas where contracting personnel documented that future work will transition to firm-fixed-price, we determined that contracting personnel were following the interim rule if they issued contracts that had both firm-fixed-price and cost-reimbursement contract line item numbers along with a statement in the contract file that allowed the firm-fixed-price contract line item numbers to be used when appropriate. We also determined that contracts noting that the award will not be able to transition to a firm-fixed-price contract for various reasons met the intent of the interim rule.

## ***Adequate Resources***

Contracting personnel were required by the interim rule to document that adequate resources are available to manage a cost-reimbursement contract. FAC 2005-50 states:

A cost-reimbursement contract may be used only when—Adequate Government resources are available to award and manage a contract other than firm-fixed-priced (*see* 7.104(e)) including— (i) Designation of at least one contracting officer's representative (COR) qualified in accordance with 1.602-2 has been made prior to award of the contract or order.

We interpreted this section of the interim rule to require evidence of an appropriate contracting officer's representative (COR) or similarly qualified individual being assigned to the contract. We obtained the COR nomination letter, signed acceptance by the COR, and COR training documents. Contracting personnel were not required by the interim rule to document this evidence in any specific location of the contract file. Although assigning a COR to the contract identifies an individual to manage a contract, it does not always indicate that adequate Government resources are available to monitor the contract as required by the interim rule. We identified the assignment of a COR on the contracts rather than testing the adequacy of the CORs assigned.

## ***Adequate Accounting System***

Contracting personnel were required by the interim rule to determine the adequacy of the contractor's accounting system during the entire period of performance for cost-reimbursement contracts. FAC 2005-50 states, "Determine the adequacy of the contractor's accounting system. The contractor's accounting system should be adequate during the entire period of contract performance." We interpreted this section of the interim rule to require documentation that the contracting officer concluded the accounting system was adequate. At a minimum, we required a statement in the file that the accounting system was adequate based on information from Defense Contract Audit Agency (DCAA) or Defense Contract Management Agency officials responsible for monitoring the contractor. We also accepted the contracting officer's conclusion or other documents, such as rate verifications and e-mails, from DCAA and Defense Contract Management Agency as adequate documentation. We focused our audit on identifying whether the contracting officer made a determination that the accounting system was adequate at contract award, rather than during the entire period of performance, as required by the interim rule.

## Contracts Reviewed

Our Federal Procurement Data System-Next Generation queries identified 2,925 cost-reimbursement, labor-hour, or time-and-materials contracts issued by the Army from March 17, 2011, through February 29, 2012, valued at about \$75 billion; this includes the value of all potential options and any firm-fixed-price portions of the contracts. To perform the review, we selected four Army sites based on a combination of cost-reimbursement award amounts and number of cost-reimbursement contracts issued. The sites visited were Ft. Huachuca Army Contracting Command-Aberdeen Proving Ground (APG) (referred throughout report as Ft. Huachuca), Sierra Vista, Arizona; Durham-APG (Durham-APG), North Carolina; Intelligence and Security Command - Ft. Belvoir (Ft. Belvoir), Ft. Belvoir, Virginia; and Army Contracting Command - Redstone Arsenal (Redstone Arsenal), Huntsville, Alabama. At the four sites we reviewed 161 contracts, with cost-reimbursement portions, valued at about \$53.3 billion; 5 of the 161 contracts accounted for about \$48.5 billion of this amount. Table 1 shows the number of basic contracts and the task or delivery orders reviewed and the contract value at each site.

*Table 1. Contracts Reviewed*

Site	Basic Contracts	Task/Delivery Order	Total	Contract Value (billions)*
Ft. Huachuca	11	7	18	\$3.1
Durham-APG	42	7	49	.3
Ft. Belvoir	5	41	46	49.3
Redstone Arsenal	40	8	48	.5
<b>Totals</b>	<b>98</b>	<b>63</b>	<b>161</b>	<b>\$53.2</b>

\*Contract value includes potential total of only cost-reimbursement elements. Individual values do not equal total because of rounding.

## Calculating Cost-Reimbursement Values of Multiple Award Contracts

The values of eight contracts in our sample disproportionately affected the value of the Army's cost-reimbursement contracts. This includes the values for five contracts in our sample issued under the DoD Language Interpretation and Translation Enterprise program. The Army Intelligence and Security Command contracting personnel at Ft. Belvoir developed the program as a multiple-award Indefinite Quantity/Indefinite Delivery contract for foreign language interpretation and translation services. Army officials determined the maximum value of this program to be \$9.7 billion, which

contracting officers could award on orders across the five contracts. Although unlikely, the potential existed that the Army issued orders only on any one of the contracts up to maximum of \$9.7 billion. Additionally, contracting officers could award a portion of the \$9.7 billion on firm-fixed-price line items. We determined the value of contracts throughout this series of audit reports as the maximum potential cost-reimbursement portion of the contract; therefore, we valued each of these five awards at \$9.7 billion each. We expanded our calculated total of cost-reimbursement contracts for Ft. Belvoir and the Army by \$38.8 billion because the total of all five contracts cannot exceed the program limit of \$9.7 billion unless funding for the program was increased.

Ft. Huachuca contracting officials also issued a series of 3 awards valued at \$892 million each under a different program. That program also had a maximum of \$892 million. This resulted in an additional expansion of about \$1.8 billion in contracts that we reviewed at Ft. Huachuca.

## **The Small Business Innovation Research Program**

The Small Business Innovation Research (SBIR) program is a three-phase program that encourages domestic small businesses to engage in Federal research and development that has the potential for commercialization. The SBIR program was developed to increase small business opportunity in federally funded research and development, stimulate high-tech innovation, and increase private-sector commercialization. The SBIR Program was established under the Small Business Innovation Development Act of 1982; the U.S. Small Business Administration serves as the coordinating agency. Phase I of the program is designed for exploration of the technical merit or feasibility of an idea or technology. A firm-fixed-price contract is almost always used for this phase. Phase II, typically a cost-plus-fixed-fee contract, consists of the research and development work, in which the developer also evaluates commercialization potential. During Phase III, the developer moves toward commercialization of the innovation. SBIR program funds cannot be used for Phase III. We did not target or avoid SBIR contracts as part of our nonstatistical sample because the interim rule does not include an exception for SBIR contracts.

The SBIR Desk Reference for Contracting and Payment, states that according to FAR Subpart 16.3, "Cost-Reimbursement Contracts," a cost-reimbursement contract may be used only when the contractor's accounting system is adequate for determining costs applicable to the contract and requires Government surveillance during the performance of the contract.

## Review of Internal Controls

DoD Instruction 5010.40, "Managers' Internal Control Program (MICP) Procedures," July 29, 2010, requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses for implementing the changes required by the interim rule regarding the use of cost-reimbursement contracts. The four sites visited did not always update local procedures or other guidance for issuing and administering cost-reimbursement contracts. Specifically, the Army did not always have procedures to approve or justify the use of cost-reimbursement contracts properly and did not always document the potential of cost-reimbursement contracts to transition to firm-fixed-price contracts. Additionally, the Army and other DoD components responsible for monitoring contractor accounting systems did not always verify the adequacy of the contractor's accounting system as required by the interim rule. We will provide a copy of the report to the senior official in charge of internal controls in the Army.

## Finding

### Sites Visited Inconsistently Implemented the Interim Rule

Of the 161 contracts reviewed, valued at about \$53.2 billion, Army contracting personnel did not consistently implement the interim rule for 107 contracts, valued at about \$10.5 billion.<sup>2</sup> Contracting personnel fully met the interim rule on 54 contracts, valued at about \$42.8 billion.

Specifically, contracting personnel did not:

- obtain approval for the use of a cost-reimbursement contract for 61 contracts valued at about \$160.2 million.
- justify the use of a cost-reimbursement contract for 34 contracts, valued at about \$130.5 million.
- document the possibility of a transition to a firm-fixed-price contract for 57 contracts, valued at about \$645.6 million.
- ensure adequate Government resources were available for 17 contracts, valued at about \$29.6 million.
- verify the adequacy of the contractor's accounting system for 33 contracts, valued at about \$9.8 billion.

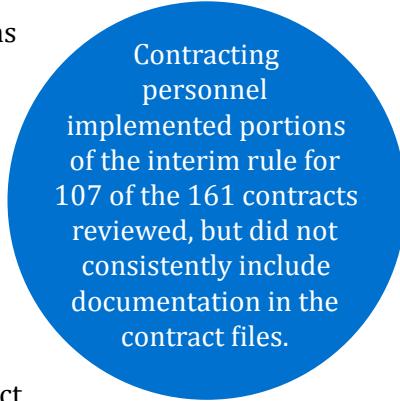
Contracting personnel generally stated they issued contracts that did not meet the interim rule because they were unaware of the interim rule requirements. Specifically for approval, they also stated that the contracts were issued in accordance with established programs suggesting the use of a cost-reimbursement type contract.

As a result, contracting personnel continue to issue cost-reimbursement contracts that may inappropriately increase the Army's contracting risks because cost-reimbursement contracts provide less incentive for contractors to control costs.

<sup>2</sup> The contracts, valued at about \$10.5 billion, include one contract in the DoD Language Interpretation and Translation Enterprise program valued at \$9.7 billion. This contract was not fully compliant because Army contracting personnel did not provide verification of the adequacy of the contractor's accounting system.

## More Consistent Documentation Procedures Needed to Fully Implement Federal Acquisition Regulation Revisions

Contracting personnel fully implemented FAR revisions on 54 contracts, valued at about \$42.8 billion, of the 161 contracts. Ft. Belvoir accounted for 38 of the 54 fully compliant contracts. The cost-reimbursement portions of the 161 contracts were valued at about \$53.2 billion.<sup>3</sup> Contracting personnel implemented portions of the interim rule for the other 107 contracts, valued at about \$10.5 billion, but did not consistently include documentation in the contract files to meet the interim rule. Contracting officials described their contracting procedures and explained their interpretation of the interim rule at each site visited. When contracting officers documented the elements of the interim rule, it was in the signed Acquisition Plan, Acquisition Strategy Plan, Price Negotiation Memorandum, Business Clearance Memorandum, or in the Determination and Finding of Contract Type. We interpreted the interim rule to apply to task or delivery orders, regardless of the timing of the basic contract award. See Appendix C for tables showing interim rule compliance by contract. Army contracting officials should emphasize the importance of the FAR revisions to contracting personnel for the use of cost-reimbursement contracts in guidance and training courses.



Contracting personnel implemented portions of the interim rule for 107 of the 161 contracts reviewed, but did not consistently include documentation in the contract files.

## Approval One Level Above the Contracting Officer for a Cost-Reimbursement Contract Varied by Site

Contracting personnel at Ft. Huachuca and Ft. Belvoir generally met the interim rule requirement to approve the use of a cost-reimbursement contract one level above the contracting officer whereas contracting personnel from Durham-APG and Redstone Arsenal did not always meet the interim rule. Contracting personnel obtained proper approval for the use of a cost-reimbursement contract for 100 contracts valued at about \$53 billion, of the 161 contracts. In the 61 cases that did not meet the interim rule requirement, valued at about \$160.2 million, contracting officers stated they were not aware of the new requirements, or believed the type of contract was already approved, because the contract was issued under the SBIR program or a

<sup>3</sup> Contract values used throughout the report refer to cost-reimbursement portions of each contract.

Broad Agency Announcement<sup>4</sup> that suggested the use of a cost-reimbursement type contract. We interpreted the interim rule to require approval at least one level above the contracting officer. However, a section of the interim rule states that approval is required one level above the contracting officer when a written acquisition plan is required. Table 2 shows the total contracts reviewed at each site and the number of those contracts that did not meet this section of the interim rule.

*Table 2. Results of Level of Approval One Level Above the Contracting Officer*

Site	Total Contracts	Did Not Meet Interim Rule
<b>Ft. Huachuca</b>	18	2
<b>Durham-APG</b>	49	39
<b>Ft. Belvoir</b>	46	2
<b>Redstone Arsenal</b>	48	18
<b>Totals</b>	<b>161</b>	<b>61</b>

Durham-APG contracting personnel did not meet the interim rule requirement to document approval of a cost-reimbursement contract one level above the contracting officer for 39 contracts, valued at about \$92.9 million, of the 49 contracts. They stated that many of their contracts are issued under broad agency announcements related to the SBIR and the Small Business Technology Transfer programs, which meant that the acquisition planning was conducted before the contract award and that the contract type was approved because the programs consist of cost contracts for research and development. Although the programs suggest the use of certain types of contracts, contracting officers should still document the need to issue a cost-reimbursement contract as required by the interim rule. The Federal Register, volume 77, number 42, Friday, March 2, 2012, discussed comments obtained in response to the cost-reimbursement interim rule and made the rule into a final rule at that time. One commenter recommended that the final rule exempt research and development contracts from the requirements. However, the response explained that there are no exemptions for research and development contracts under the Duncan Hunter National Defense Authorization Act for fiscal year 2009.

Redstone Arsenal personnel did not meet the interim rule requirement to document approval of cost-reimbursement contract one level above the contracting officer for 18 contracts, valued at about \$33.5 million, of 48 contracts. Redstone Arsenal contracting personnel stated they were unaware of the interim rule.

<sup>4</sup> A Broad Agency Announcement is used to fulfill needs in scientific study and experimentation geared towards increasing knowledge and understanding that do not focus on specific systems or programs.

Although Durham-APG did not meet the interim rule for most of the contracts, we are not going to make a recommendation specific to Durham-APG because we identified confusion regarding whether contracts in the SBIR and similar programs required approval on a DoD-wide level. We plan to include a DoD-wide recommendation in the summary report issued at the completion of this series of reports.

## Justification Documenting the Use of a Cost-Reimbursement Contract Type Varied by Site

Contracting personnel at Ft. Huachuca, Durham-APG, and Ft. Belvoir generally satisfied the interim rule requirement to justify a cost-reimbursement type contract whereas contracting personnel at Redstone Arsenal did not always meet the interim rule requirement. Contracting personnel met the interim rule requirement to justify a cost-reimbursement type contract for 127 contracts, valued at about \$53 billion, of the 161 contracts. However, contracting personnel did not satisfy the interim rule's requirement to justify a cost-reimbursement type contract for 34 contracts, valued at about \$130.5 million, because contracting personnel generally stated they were not aware of the interim rule. We accepted documentation of prior acquisition planning and justification to issue a cost-reimbursement contract. We also interpreted the interim rule to require justification of contract type regardless of the contract line item structure. Table 3 shows the total contracts reviewed at each site and the number of those contracts that did not meet this section of the interim rule.

*Table 3. Justified the Use of a Cost-Reimbursement Contract Type*

Site	Total Contracts	Did Not Meet Interim Rule
<b>Ft. Huachuca</b>	18	1
<b>Durham-APG</b>	49	1
<b>Ft. Belvoir</b>	46	4
<b>Redstone Arsenal</b>	48	28
<b>Totals</b>	<b>161</b>	<b>34</b>

Redstone Arsenal contracting personnel did not satisfy the interim rule requirement to justify a cost-reimbursement type contract on 28 contracts, valued at \$84 million, of the 48 contracts. Redstone Arsenal contracting personnel stated they were unaware of the interim rule requirements.

The office of the Assistant Secretary of the Army for Acquisition, Logistics, and Technology issued "Justification of Contract Type and Incentive Strategies," memorandum of

January 8, 2012, to promote the use of fixed-price contracts over time and materials and cost-type contracts. Under the memorandum, contracting personnel are required to justify the contract type selected in a memorandum, which shall be approved by the Head of the Contracting Activity for all contracts exceeding \$100 million. Only a small portion of Army cost-type contracts will be affected by this memorandum because of the threshold. We concluded that only one contract in our sample was subject to this guidance because of the large threshold amount and the small period of time between the memorandum issuance and the scope of the contracts that we reviewed. Therefore, we were not able to assess the effectiveness of this memorandum. The Assistant Secretary of the Army for Acquisition, Logistics, and Technology should consider updating the January 8, 2012, memorandum to eliminate the dollar threshold for cost-type contracts to align with the interim rule and address the other areas of the interim rule regarding cost-reimbursement contracts.

## **Documentation to Support Efforts to Transition Subsequent Requirements to Firm-Fixed-Price Contracts Varied by Site**

Contracting personnel at Durham-APG and Ft. Belvoir generally documented the possibility of transitioning from a cost-reimbursement type contract to a firm-fixed price contract, whereas contracting personnel at Ft. Huachuca at Redstone Arsenal did not always meet the interim rule requirement. Contracting personnel met the interim rule requirement to show transition to a firm-fixed-price contract for 104 contracts, valued at about \$52.6 billion, of the 161 contracts. In the other 57 cases, valued at about \$645.6 million, contracting personnel generally stated they did not document the possibility of transitioning to firm-fixed-price contracts because they were unaware of the requirement to document the potential of a cost-reimbursement contract to transition to firm-fixed-price. Table 4 shows the total contracts reviewed at each site and the number of those contracts that did not meet this section of the interim rule.



In the other 57 cases... Army contracting personnel stated they did not document the possibility of transitioning to firm-fixed-price contracts because they were unaware of the requirements.

*Table 4. Results of Efforts to Transition Subsequent Contracts to Firm-fixed-price*

Site	Total Contracts	Did Not Meet Interim Rule
<b>Ft. Huachuca</b>	18	8
<b>Durham-APG</b>	49	6
<b>Ft. Belvoir</b>	46	7
<b>Redstone Arsenal</b>	48	36
<b>Totals</b>	<b>161</b>	<b>57</b>

Redstone Arsenal contracting personnel failed to document the possibility of transition to a firm-fixed-price contract type from a cost-reimbursement contract in 36 contracts, valued at about \$381.3 million, of the 48 contracts. Redstone Arsenal contracting personnel stated they were unaware of the interim rule requirement.

Army contracting officials should promote the issuance of more hybrid contracts that contain multiple line items for the same service or item with different price structure so that contract type can be selected on each task or delivery order. Army contracting personnel should also establish better communication channels between the requiring component and contract monitors to more effectively identify opportunities to transition away from cost-reimbursement contracts when possible.

The Director, Army Contracting Command Redstone, should establish procedures for contracting officers to document the possibility of transitioning to firm-fixed-price contracts in a Determination and Finding for Contract Type or a similar document each time a cost-reimbursement contract is used. We made this recommendation specific to Redstone Arsenal because most of the contracts reviewed did not meet the interim rule.

## Contracting Officials Ensured Government Resources Were Available to Monitor Award

Contracting personnel generally met the interim rule requirement to make adequate Government resources available to monitor a cost-reimbursement contract for 144 contracts, valued at about \$53.2 billion, of the 161 contracts. In the 17 cases of noncompliance, valued at about \$29.6 million, contracting personnel generally stated they were unaware of the interim rule requirement to make Government resources available to monitor a cost-reimbursement contract. For two of the noncompliant contracts at Ft. Huachuca, contracting officials appointed CORs after the contract award. Contracting personnel documented adequate Government resources available to monitor the contract award in the COR nomination letter, appointment letter, and training

certificates. Table 5 shows the total contracts reviewed at each site and the number of those contracts that did not meet this section of the interim rule.

*Table 5. Results of Government Resources Available to Monitor Award*

Site	Total Contracts	Did Not Meet Interim Rule
<b>Ft. Huachuca</b>	18	3
<b>Durham-APG</b>	49	7
<b>Ft. Belvoir</b>	46	0
<b>Redstone Arsenal</b>	48	7
<b>Totals</b>	<b>161</b>	<b>17</b>

We are not making a recommendation to address the noncompliance in the areas because of the relatively small number of contracts that did not meet the requirements of the interim rule.

## Adequate Accounting Systems Varied by Site

Contracting personnel at Durham-APG, Ft. Belvoir, and Redstone Arsenal generally verified that an adequate accounting system was in place, whereas Ft. Huachuca did not always meet the interim rule requirement. Contracting personnel met the interim rule requirement for 128 contracts, valued at about \$43.5 billion, of the 161 contracts. Of the 33 cases of noncompliance, valued at about \$9.8 billion, contracting personnel stated they were unaware of the interim rule requirements or stated they did not receive timely support from DCAA auditors. Contracting personnel at Ft. Huachuca were able to provide one example of DCAA auditors not responding to an audit request. Contracting personnel documented the adequacy of the contractor's accounting system with the DCAA report included in the contract documentation, or with the reference to a DCAA report in the Price Negotiation Memorandum, or a Defense Contract Management Agency memorandum. Table 6 shows the total contracts reviewed at each site and the number of those contracts that did not meet this section of the interim rule.

*Table 6. Results of Adequate Accounting System in Place*

Site	Total Contracts	Did Not Meet Interim Rule
<b>Ft. Huachuca</b>	18	8
<b>Durham-APG</b>	49	10
<b>Ft. Belvoir</b>	46	3
<b>Redstone Arsenal</b>	48	12
<b>Totals</b>	<b>161</b>	<b>33</b>

Ft. Huachuca contracting personnel failed to verify that an adequate accounting system was in place before award for 8 contracts, valued at about \$28.3 billion, of the 18 contracts. They stated they did not receive timely support from the DCAA auditors. Ft. Huachuca contracting officials stated that they have already begun to train personnel to ensure contractors' accounting systems are adequate before award and to specifically document how they made this determination in the contract files. The Director of Contracting, Fort Huachuca Army Contracting Command-Aberdeen Proving Ground should reemphasize the requirement that contracting officers must determine that contractors have an adequate accounting system in place before issuing a cost-reimbursement contract. Redstone Arsenal contracting officials stated they were unaware of the interim rule for the 12 contracts that did not meet the interim rule. Additionally, Durham-APG contracting personnel were unable to verify the adequacy of the contractor's accounting system for 10 contracts because the order files lacked contractor accounting system documentation and the base files for those contracts were not available at the time of our review.

## Firm-Fixed-Price Contracts Properly Classified

Contracting officials classified firm-fixed-price contracts correctly and did not avoid the increased cost-reimbursement contract documentation requirements by purposely miscoding contracts. We reviewed 160 contracts identified as firm-fixed-price contracts in Electronic Document Access that were issued by contracting personnel at the four Army sites. We reviewed some contracts that contained a small cost-reimbursement portion within the contract, but if the contract was predominately firm-fixed-price, we considered the award classified correctly. We determined that contracting personnel properly classified these contracts.

## Conclusion

Contracting personnel did not consistently implement the interim rule for 107 contracts, valued at about \$10.5 billion, of the 161 contracts, valued at about \$53.3 billion. Contracting personnel fully met the interim rule on 54 contracts, valued at about \$42.8 billion, of the 161 contracts at the four Army sites. Contracting personnel continue to issue cost-reimbursement contracts that may inappropriately increase the Army's contracting risks because cost-reimbursement contracts provide less incentive for contractors to control costs. Contracting personnel can do a better job planning, issuing, and overseeing cost-reimbursement contracts by fully implementing the FAR revisions.

## Recommendations, Management Comments, and Our Response

### **Recommendation 1**

We recommend that the Assistant Secretary of the Army for Acquisition, Logistics, and Technology:

- a. Emphasize the importance of the Federal Acquisition Regulation revisions to contracting personnel for the use of cost-reimbursement contracts in guidance and training courses.**

#### *The Office of the Assistant Secretary of the Army Acquisition Logistics and Technology Comments*

On the behalf of the Assistant Secretary of the Army for Acquisition, Logistics, and Technology, the Deputy Assistant Secretary of the Army (Procurement) agreed, stating that a Policy Alert will be issued to the Heads of the Contracting Activity and Principal Assistants Responsible for Contracting to emphasize the importance of the June 19, 2013, memorandum, "Implementation Directive for Better Buying Power 2.0—Achieving Greater Efficiency and Productivity in Defense Spending" and to remind contracting personnel to comply with the FAR revisions regarding the use of cost-reimbursement contracts. The Policy Alert will be sent out no later than October 30, 2013.

- b. Update the "Justification of Contract Type and Incentive Strategies," January 8, 2012 memorandum to eliminate the dollar threshold for cost-type contracts to align with the interim rule and address the other three areas of the interim rule.**

#### *The Office of the Assistant Secretary of the Army Acquisition Logistics and Technology Comments*

The Deputy Assistant Secretary of the Army (Procurement) agreed, stating that they will update the "Justification of Contract Type and Incentive Strategies" memorandum to reassess the dollar threshold for cost-type contracts and address the other three components of the FAR interim rule.

- c. Promote the issuance of more hybrid contracts that contain multiple line items for the same service or item with different price structure so that contract type can be selected on each task or delivery order.**

*The Office of the Assistant Secretary of the Army Acquisition Logistics and Technology Comments*

The Deputy Assistant Secretary of the Army (Procurement) agreed, stating that a Policy Alert will be sent no later than October 30, 2013, to contracting personnel to emphasize the importance of the June 19, 2013, memorandum, "Implementation Directive for Better Buying Power 2.0—Achieving Greater Efficiency and Productivity in Defense Spending." The directive includes guidance on selecting the appropriate contract type and the use of hybrid contracts.

- d. Establish better communication channels among the requiring component, contracting personnel, and contract monitors to more effectively identify opportunities to transition away from cost-reimbursement contracts when possible.**

*The Office of the Assistant Secretary of the Army Acquisition Logistics and Technology Comments*

The Deputy Assistant Secretary of the Army (Procurement) agreed, stating that the Office of the Assistant Secretary of the Army for Acquisition, Logistics, and Technology issued the June 19, 2013, memorandum, "Implementation Directive for Better Buying Power 2.0—Achieving Greater Efficiency and Productivity in Defense Spending." The memorandum requires each Program Executive Officer and Principal Assistant Responsible for Contracting to ensure that all personnel are aware and following the new directive and assigns each Deputy Assistant Secretary of the Army as a responsible official to oversee the timely execution of the prescribed initiatives.

*Our Response*

Comments from the Deputy Assistant Secretary of the Army (Procurement) are responsive and no further comments are required.

**Recommendation 2**

**We recommend that Director, Army Contracting Command-Redstone, in an effort to meet the increased requirements before issuing a cost-reimbursement contract, establish procedures for contracting officers to document the possibility of transitioning to firm-fixed-price contracts in a Determination and Finding for Contract Type or a similar document each time a cost-reimbursement contract is used.**

### *Army Contracting Command–Redstone Comments*

On the behalf of the Director, Army Contracting Command–Redstone, the Executive Deputy to the Commanding General, Army Materiel Command agreed, stating that procedures will be established for contracting officers to document the possibility of transitioning to firm-fixed-price contracts in a Determination and Finding for Contract Type or a similar document. The procedures will be established by September 30, 2013.

### *Our Response*

Comments from the Executive Deputy to the Commanding General, Army Materiel Command are responsive and no further comments are required.

### **Recommendation 3**

**We recommend that the Director of Contracting, Fort Huachuca Army Contracting Command–Aberdeen Proving Ground reemphasize the requirement that contracting officers should determine that contractors have an adequate accounting system in place before issuing a cost-reimbursement contract.**

### *Army Contracting Command–Ft. Huachuca Comments*

On the behalf of the Director of Contracting, Fort Huachuca Army Contracting Command–Aberdeen Proving Ground, the Executive Deputy to the Commanding General, Army Materiel Command agreed, stating that the contracting office's branch chiefs have discussed the importance of the requirement to ensure the contractors have an adequate accounting system in place with the contracting officers. Additionally, the contracting office has included a requirement for the contractor's accounting system to be addressed in the Justification for Contract Type Determination, the Acquisition Plan or Service Acquisition Strategy, where applicable; and the Cost Realism Analysis Evaluation Factor be part of solicitation preparation. Further, the division procurement analyst will review all newly awarded cost-reimbursement contracts to ensure the adequacy of the contractor's accounting system. Lastly, the contracting office will implement a training that will include guidance on cost accounting systems in fiscal year 2014.

### *Our Response*

Comments from the Executive Deputy to the Commanding General, Army Materiel Command are responsive and no further comments are required.

## Appendix A

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### Scope and Methodology

We conducted work used as a basis for this report from February 2012 through August 2012 under DoDIG Project No. D2012-D000CG-0121.000. In August 2012, we decided to issue multiple reports as a result of those efforts. From August 2012 through February 2013, we primarily performed work on another report in this series. In February 2013, we announced project D2013-D000CG-0102.000 specifically for Army contracts and conducted this performance audit through June 2013. Both projects were completed in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The criteria we applied to this audit included Federal Acquisition Regulation (FAR) revisions implemented by section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 and included the Interim Rule 76 Federal Register 14542, "Proper Use and Management of Cost-Reimbursement Contracts." We also reviewed Defense Federal Acquisition Regulation Supplement 242.7502, "Policy," and the Defense Federal Acquisition Regulation Supplement Clause 252.242-7005, "Contractor Business Systems," as well as the Small Business Innovation Research (SBIR) policy directive. The FAR sections updated by the interim rule include FAR 1.602-2, "Responsibilities;" FAR 1.604, "Contracting Officers Representative;" FAR 2.101, "Definitions;" FAR 7.103, "Agency-Head Responsibilities;" FAR 7.104, "General Procedures;" FAR 7.105, "Contents of Written Acquisition Plans;" FAR 16.103, "Negotiating Contract Types;" FAR 16.104, "Factors in Selecting Contract Types;" FAR 16.301-2, "Application;" FAR 16.301-3, "Limitations;" FAR 42.301, "Contract Administration Functions;" and FAR subpart 50.1, "Extraordinary Contractual Actions."

We plan to issue separate reports for each Service, one report to include the Missile Defense Agency and the Defense Microelectronics Activity, as well as a summary report. This is the second report in the planned series of reports and includes contracts issued by the Department of the Army at the four sites visited. This audit was required by the FY 2009 National Defense Authorization Act, section 864, "Regulation on the Use of Cost-Reimbursement Contracts." Our objective was to determine whether DoD has complied with interim FAR revisions on the use of cost-reimbursement contracts.

To determine compliance with the interim rule, our methodology included reviewing basic contract and task and delivery order files that varied slightly from the specific interim rule requirements. In cases where the interim rule required areas to be documented in the Acquisition Plan, we expanded our review to the entire contract file because, in many cases, the Acquisition Plan was written and approved before the interim rule was issued. Additionally, we focused our audit to assess how contracting personnel determined that adequate resources were available to monitor the award by determining whether a contracting officer's representative (COR) or similar person was assigned to the contract at issuance. We did not determine whether the person assigned had an appropriate workload or was properly geographically located to monitor the award. We identified the assignment of a COR on the contracts rather than testing the adequacy of the COR assigned to the contract reviewed. Additionally, we determined whether the contracting officer documented that the contractor's accounting system was adequate at contract award and not during the entire period of contract performance as required by the interim rule.

### ***Universe and Sample Information***

We used Federal Procurement Data System-Next Generation to identify a universe of cost-reimbursement, labor hour, and time and materials contracts issued by the Army from March 17, 2011, through February 29, 2012. We included task and delivery orders issued after March 17, 2011, in our universe even if the basic contract was issued before the interim ruling. We limited the review to contracts valued at \$150,000 or above. We removed contract modifications from our universe because they are not new contract awards. We eliminated Army contracts that were issued on General Service Administration contracts. We queried all Army cost-reimbursement contracts from March 17, 2011, through February 29, 2012. Our universe consisted of 2,925 contract actions, on 1,273 contracts, valued at about \$75 billion; this includes the value of all potential options and any firm-fixed-price portions of the contracts. We visited four Army sites and reviewed 161 nonstatistically selected contracts with cost-reimbursement portions valued at about \$53.3 billion. We selected the four Army sites based on a combination of cost-reimbursement award amounts and number of cost-reimbursement contracts and task or delivery orders issued. The Army sites visited were Ft. Huachuca Army Contracting Command-APG (referred throughout report as Ft. Huachuca), Sierra Vista, Arizona; Durham-APG (Durham-APG), North Carolina; Intelligence and Security Command-Ft. Belvoir (Ft. Belvoir), Ft. Belvoir, Virginia; and Army Contracting Command-Redstone Arsenal (Redstone Arsenal), Huntsville, Alabama.

Our nonstatistical sample consisted of 50 contracts from each of the Army sites, with the exception of Fort Huachuca, where we reviewed all the 18 available contracts. We reviewed as many of the contracts that were readily available at each site. We removed 7 contracts of 168 contracts because they were misclassified—that is, were actually firm-fixed-price contracts, were not located on the site, were not reviewed because of time constraints during the site visit, or were removed for other reasons.

### ***Review of Documentation and Interviews***

We reviewed documentation maintained by the Army's contracting offices. The documents reviewed included Acquisition Plans, Business Clearance Memorandums, Pre/Post Price Negotiation Memorandums, Determination and Finding for Contract Type, COR designation letters, COR training certificates, Defense Contract Audit Agency audit reports, Defense Contract Management Agency reports, and other documentation included in the contract file to comply with the interim rule. We reviewed contract award documentation, including basic contract files from FY 2007 through FY 2012. We interviewed Army personnel responsible for awarding contracts as well as quality assurance personnel, such as CORs, who were responsible for monitoring the contracts.

At each Army site visited, we determined whether Army contracting personnel implemented the interim rule by documenting:

- the approval for the cost-reimbursement contract was at least one level above the contracting officer.
- the justification for the use of cost-reimbursement, time and materials, or labor hour contracts.
- how the requirements under contract could transition to firm-fixed-price in the future.
- that Government resources were available to monitor the cost-reimbursement contract.
- whether the contractor had an adequate accounting system in place at contract award.

We tested Army contracts to determine whether Army contracting personnel were misclassifying cost-reimbursement contracts as firm-fixed-price contracts. We used Federal Procurement Data System—Next Generation and Electronic Document Access to review the firm-fixed-price contracts. We reviewed between 40 and 50 firm-fixed-price contracts at each site to determine whether contracts contained cost-reimbursement line items.

## ***Use of Computer-Processed Data***

We did not rely on computer-processed data for this audit.

## ***Use of Technical Assistance***

The DoD Office of Inspector General Quantitative Methods Division (QMD) assisted with the audit. We worked with QMD during our planning phase to determine the number of sites per Service to visit and the number of contracts that should be reviewed at each site. QMD suggested that we should visit 3 to 5 sites per Service and have a nonstatistical sample of at least 30 contracts per site. We decided to review all contracts at sites with fewer than 30 contracts.

## ***Prior Coverage***

During the last 5 years, the Government Accountability Office, the Department of Homeland Security Inspector General, the General Services Administration Inspector General, and the National Aeronautics and Space Administration Inspector General have issued 5 reports discussing oversight of the use of cost-reimbursement contracts. Unrestricted Government Accountability Office reports can be accessed over the Internet at [www.gao.gov](http://www.gao.gov). Unrestricted Department of Defense Inspector General reports can be accessed at [www.dodig.mil](http://www.dodig.mil). Department of Homeland Defense Inspector General reports can be accessed at [www.oig.dhs.gov](http://www.oig.dhs.gov). Unrestricted General Services Administration Inspector General reports can be accessed at [www.gsaig.gov](http://www.gsaig.gov). Unrestricted National Aeronautical and Space Administration Inspector General reports can be accessed at [www.oig.nasa.gov](http://www.oig.nasa.gov).

### *Government Accountability Office*

Report No. GAO-09-921, "Contract Management: Extent of Federal Spending Under Cost-Reimbursement Contracts Unclear and Key Controls Not Always Used," September 30, 2009

### *Department of Defense Inspector General*

Report No. DODIG-2013-059, "Air Force Needs Better Processes to Appropriately Justify and Manage Cost-Reimbursable Contracts," March 21, 2013

### *Department of Homeland Security Inspector General*

Report No. OIG-12-133, "Department of Homeland Security Compliance with the Federal Acquisition Regulation Revisions on Proper Use and management of Cost-Reimbursement Contracts," September 28, 2012

*General Services Administration Inspector General*

Report No. A120052/Q/A/P12004, "Audit of GSA's Cost-Reimbursement Contracts,"  
March 30, 2012

*National Aeronautics and Space Administration Inspector General*

Report No. IG-12-014, "Final Memorandum on NASA's Compliance with Provisions  
of the Duncan Hunter National Defense Authorization Act 2009—Management of Cost-  
Reimbursement Contracts," March 14, 2012

## Appendix B

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### Federal Acquisition Circular 2005-50 Issued March 16, 2011

**Federal Register/Vol. 76, No. 51/Wednesday, March 16, 2011/Rules and Regulations 14543**

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**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Parts 1, 2, 7, 16, 32, 42, and 50**

**[FAC 2005-50; FAR Case 2008-030; Item  
I; Docket 2011-0082, Sequence 1]**

**RIN 9000-AL78**

**Federal Acquisition Regulation; Proper  
Use and Management of Cost-  
Reimbursement Contracts**

**AGENCIES:** Department of Defense (DoD),  
General Services Administration (GSA),  
and National Aeronautics and Space  
Administration (NASA).

**ACTION:** Interim rule with request for  
comments.

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**SUMMARY:** DoD, GSA, and NASA are  
issuing an interim rule amending the  
Federal Acquisition Regulation (FAR) to  
implement section 864 of the Duncan  
Hunter National Defense Authorization  
Act for Fiscal Year 2009. This law aligns

# Federal Acquisition Circular 2005-50 Issued March 16, 2011 (cont'd)

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established new requirements for agencies subject to Title 10, United States Code. As a matter of policy, this provision of law was applied to contracts awarded by all executive agencies. The rule requires that market research must be conducted before an agency places a task or delivery order in excess of the simplified acquisition threshold under an indefinite-delivery indefinite-quantity contract. In addition, a prime contractor with a contract in excess of \$5 million for the procurement of items other than commercial items is required to conduct market research before making purchases that exceed the simplified acquisition threshold. Among other changes, the final rule also deletes the language added to FAR 52.244-6 (Alternate I) and relocates it to a new FAR clause 52.210-1, Market Research.

#### Item V—Socioeconomic Program Parity (FAR Case 2011-004) (Interim)

This interim rule amends the FAR to implement section 1347 of the “Small Business Jobs Act of 2010” (Pub. L. 111-240) and the Small Business Administration regulations governing specific contracting and business assistance programs. Section 1347 changed the word “shall” to “may” at section 31(b)(2)(B) of the Small Business Act (15 U.S.C. 657a(b)(2)(B)), thereby permitting a contracting officer to use discretion when determining whether an acquisition will be restricted to a small business participating in the 8(a) Business Development Program, the Historically Underutilized Business Zone Program, or the Service-Disabled Veteran-Owned Small Business Program.

#### Item VI—Use of Commercial Services Item Authority (FAR Case 2008-034)

This final rule adopts, without change, an interim rule that implemented section 868 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417). Section 868 provides that the FAR shall be amended with respect to the procurement of commercial services that are not offered and sold competitively in substantial quantities in the commercial marketplace, but are of a type offered and sold competitively in substantial quantities in the commercial marketplace. Such services may be considered commercial items only if the contracting officer has determined in writing that the offeror has submitted sufficient information to evaluate, through price analysis, the reasonableness of the price for these services.

The rule details the information the contracting officer may consider in

order to make this determination. The rule further details, when this determination cannot be made, the information which may be requested to determine price reasonableness.

#### Item VII—Trade Agreements Thresholds (FAR Case 2009-040)

This final rule adopts, without change, an interim rule that amended the FAR to adjust the thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements as determined by the United States Trade Representative, according to a pre-determined formula under the agreements.

#### Item VIII—Disclosure and Consistency of Cost Accounting Practices for Contracts Awarded to Foreign Concerns (FAR Case 2009-025)

This final rule adopts, without change, the interim rule that amended the FAR to revise FAR 30.201-4(c), 30.201-4(d)(1), 52.230-4, and 52.230-6 to maintain consistency between FAR and Cost Accounting Standards (CAS) regarding the administration of the Cost Accounting Standard Board’s (CASB) rules, regulations and standards. This revision was necessitated by the CASB publishing a final rule in the **Federal Register** on March 26, 2008 (73 FR 15939) which implemented the revised clause, Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns, in CAS-covered contracts and subcontracts awarded to foreign concerns.

#### Item IX—Compensation for Personal Services (FAR Case 2009-026)

This final rule adopts, without change, the interim rule that amended the FAR to align the existing FAR 31.205-6(q)(2)(i) through (vi) with the changes made in Cost Accounting Standards (CAS) Board standards 412 “Cost Accounting Standard for composition and measurement of pension cost,” and 415 “Accounting for the cost of deferred compensation.” Formerly, the applicable CAS standard for measuring, assigning, and allocating the costs of Employee Stock Ownership Plans (ESOPs) depended on whether the ESOP met the definition of a pension plan at FAR 31.001. Costs for ESOPs meeting the definition of a pension plan at FAR 31.001 were covered by CAS 412, while the costs for ESOPs not meeting the definition of a pension plan at FAR 31.001 were covered by CAS 415. Now, regardless of whether an ESOP meets the definitions of a pension plan at FAR 31.001, all costs of ESOPs are covered by CAS 415.

#### Item X—Technical Amendments

Editorial changes are made at FAR 19.201, 52.212-3, and 52.212-5.

Dated: March 4, 2011.

#### Millisa Gary,

*Acting Director, Office of Governmentwide Acquisition Policy.*

Federal Acquisition Circular (FAC) 2005-50 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-50 is effective March 16, 2011, except for Item IV which is effective April 15, 2011, and Item II which is effective May 16, 2011.

Dated: March 4, 2011.

#### Amy G. Williams,

*Acting Deputy Director, Defense Procurement and Acquisition Policy (Defense Acquisition Regulations System).*

Dated: March 4, 2011.

#### Joseph A. Neurauter,

*Deputy Associate Administrator and Senior Procurement Executive, Office of Acquisition Policy, U.S. General Services Administration.*

Dated: February 28, 2011.

#### Sheryl J. Goddard,

*Acting Assistant Administrator for Procurement National Aeronautics and Space Administration.*

[FR Doc. 2011-5551 Filed 3-15-11; 8:45 am]

**BILLING CODE 6820-EP-P**

## DEPARTMENT OF DEFENSE

### GENERAL SERVICES ADMINISTRATION

#### NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

#### 48 CFR Parts 1, 2, 7, 16, 32, 42, and 50

[FAC 2005-50; FAR Case 2008-030; Item I; Docket 2011-0082, Sequence 1]

#### RIN 9000-AL78

#### Federal Acquisition Regulation; Proper Use and Management of Cost-Reimbursement Contracts

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD, GSA, and NASA are issuing an interim rule amending the Federal Acquisition Regulation (FAR) to implement section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009. This law aligns

# Federal Acquisition Circular 2005-50 Issued March 16, 2011 (cont'd)

**14544** **Federal Register** / Vol. 76, No. 51 / Wednesday, March 16, 2011 / Rules and Regulations

with the Presidential Memorandum on Government Contracting, issued on March 4, 2009, which directed agencies to save \$40 billion in contracting annually by Fiscal Year (FY) 2011 and to reduce the use of high-risk contracts. This rule provides regulatory guidance on the proper use and management of other than firm-fixed-price contracts (e.g., cost-reimbursement, time-and-material, and labor-hour).

**DATES: Effective Date:** March 16, 2011.

**Comment Date:** Interested parties should submit written comments to the Regulatory Secretariat on or before May 16, 2011 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAC 2005-50, FAR Case 2008-030, by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting "FAR Case 2008-030" under the heading "Enter Keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "FAR Case 2008-030." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "FAR Case 2008-030" on your attached document.

- *Fax:* (202) 501-4067.

- *Mail:* General Services

Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

**Instructions:** Please submit comments only and cite FAC 2005-50, FAR Case 2008-030, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Lori Sakalos, Procurement Analyst, at (202) 208-0498. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501-4755. Please cite FAC 2005-50, FAR Case 2008-030.

## SUPPLEMENTARY INFORMATION:

### I. Background

This case implements section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417), enacted October 14, 2008. This law aligns with the President's goal of reducing high-risk contracting as denoted in the March 4, 2009, Presidential Memorandum on Government Contracting.

Section 864 requires the FAR to be revised to address the use and management of cost-reimbursement contracts and identifies the following three areas that the Defense Acquisition Regulation Council and the Civilian Agency Acquisition Council (Councils) should consider in amending the FAR—

- (a) Circumstances when cost-reimbursement contracts are appropriate;
- (b) Acquisition plan findings to support the selection of a cost-reimbursement contract; and
- (c) Acquisition resources necessary to award and manage a cost-reimbursement contract.

1. *Guidance on Cost-reimbursement contracts.* As required, the Councils included additional coverage at FAR subpart 16.1, Selecting Contract Types, and at subpart 16.3, Cost-Reimbursement Contracts, to provide further guidance as to when, and under what circumstances, cost-reimbursement contracts are appropriate. Therefore, this rule makes the following changes:

- FAR 16.103, Negotiating contract type, is amended to revise paragraph (d) to reflect additional documentation when other than a firm-fixed-price contract type is selected.
- FAR 16.104, Factors in selecting contract types, is amended to add a new paragraph (e) to provide guidance to the contracting officer to consider combining contract types if the entire contract cannot be firm fixed-price.
- FAR 16.301-2, Application, is amended to provide guidance to the contracting officer as to the circumstances in which to use cost-reimbursement contracts as well as outlining the rationale for documentation for selecting this contract type.

• FAR 16.301-3, Limitations, is amended to (1) provide additional guidance to the contracting officer as to when a cost-reimbursement contract may be used, (2) ensure that all factors have been considered per FAR 16.104, and (3) ensure that adequate Government resources are available to award and manage this type of contract.

- FAR 7.104(e) also requires the designation of a properly trained contracting officer's representative (COR) (or contracting officer's technical representative (COTR)) prior to award of the contract or order.

2. *Identification of acquisition plan findings.* FAR 7.103, Agency-head responsibilities, is amended and renumbered to add new paragraphs 7.103(d), 7.103(f), and 7.103(j) to ensure that acquisition planners document the file to support the selection of the

contract type in accordance with FAR subpart 16.1; ensure that the statement of work is closely aligned with the performance outcomes and cost estimates; and obtain an approval and signature from the appropriate acquisition official at least one level above the contracting officer. FAR 7.105(b)(5)(iv) was added to discuss the strategy to transition from cost-reimbursement contracts to firm-fixed-price contracts. Although FAR 7.105(b)(5), Acquisition considerations, requires the acquisition plans to include a discussion of contract type selection and rationale, the Councils believe that a greater emphasis on the use of cost-reimbursement contracts should be added and included a new paragraph at FAR 7.105(b)(3), Contract type selection. Additionally, FAR 16.301-3(a) has been amended and renumbered.

3. *Acquisition workforce resources.* The Councils recognize that assigning adequate and proper resources to support the solicitation, award, and administration of other than firm-fixed-price contracts (cost-reimbursement, time-and-material, and labor-hour) contract is challenging. There is also great concern that a lack of involvement in contract oversight by program offices is primarily present in other than firm-fixed-price contracts. Therefore, from the outset, contracting officers should be assured, to the greatest extent practicable, that the right resources in number, kind, and availability be assigned to support other than firm-fixed-price contracts. The Councils consider that greater accountability for the management and oversight of all contracts, especially other than firm-fixed-price contracts, can be gained and improved by requiring that properly trained CORs or COTRs (see FAR 2.101(b)(2), Definitions) be appointed before award. Therefore, FAR 7.104, General Procedures, and FAR 16.301-3(a)(4)(i) are amended to reflect that prior to award of a contract, especially on other than firm-fixed price contracts, at least one COR or COTR qualified in accordance with FAR 1.602-2 is designated. FAR 1.602-2, Responsibilities, is amended to add a new paragraph (d) outlining the requirement for the contracting officer to designate and authorize, in writing, a COR on contracts and orders, as appropriate. Additionally, a new section was added at FAR 1.604, Contracting officer's representative, outlining the COR's duties.

4. *Contract administration functions.* A new paragraph was added at FAR 42.302(a)(12) to require that the contracting officer determine the continuing adequacy of the contractor's

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accounting system during the entire period of contract performance. Also, paragraph (a)(12) was added to the list of functions at FAR 42.302(a) that cannot be retained and that must be delegated by the contracting officer when delegating contract administration functions to a contract administration office in accordance with FAR 42.202(a).

## II. Executive Order 12866

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

## III. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because section 864 affects only internal Government operations and requires the Government to establish internal guidance on the proper use and management of all contracts especially other than firm-fixed-price contracts (e.g., cost-reimbursement, time-and-material, and labor-hour) and does not impose any additional requirements on small businesses.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business entities and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAC 2005-50, FAR Case 2008-030) in correspondence.

## IV. Paperwork Reduction Act

The changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

## V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and

compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because section 864 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, enacted October 14, 2008, directs that it must be implemented within 270 days from enactment. This rule is also urgent because this law requires the Inspector General to conduct a compliance review for each executive agency, one year after the regulations have been promulgated, on the use of cost-reimbursement contracts and include the results of their findings in the IG's next semiannual report. However, pursuant to 41 U.S.C. 1707 and FAR 1.501-3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

### List of Subjects in 48 CFR Parts 1, 2, 7, 16, 32, 42, and 50

Government procurement.

Dated: March 4, 2011.

**Millisa Gary,**

*Acting Director, Office of Governmentwide Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 7, 16, 32, 42, and 50 as set forth below:

- 1. The authority citation for 48 CFR parts 1, 2, 7, 16, 32, 42, and 50 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

- 2. Amend section 1.602-2 by adding paragraph (d) to read as follows:

### 1.602-2 Responsibilities.

\* \* \* \* \*

(d) Designate and authorize, in writing, a contracting officer's representative (COR) on all contracts and orders other than those that are firm-fixed price, and for firm-fixed-price contracts and orders as appropriate. However, the contracting officer is not precluded from retaining and executing the COR duties as appropriate. *See* 7.104(e). A COR—

(1) Must be a Government employee, unless otherwise authorized in agency regulations;

(2) Shall be certified and maintain certification in accordance with the Office of Management and Budget memorandum entitled "The Federal Acquisition Certification for Contracting Officer Technical Representatives" dated November 26, 2007, or for DoD, DoD Regulations, as applicable;

(3) Must be qualified by training and experience commensurate with the responsibilities to be delegated in accordance with department/agency guidelines;

(4) May not be delegated responsibility to perform functions that have been delegated under 42.202 to a contract administration office, but may be assigned some duties at 42.302 by the contracting officer;

(5) Has no authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract; and

(6) Must be designated in writing, with copies furnished to the contractor and the contract administration office—

(i) Specifying the extent of the COR's authority to act on behalf of the contracting officer;

(ii) Identifying the limitations on the COR's authority;

(iii) Specifying the period covered by the designation;

(iv) Stating the authority is not redelegable; and

(v) Stating that the COR may be personally liable for unauthorized acts.

- 3. Amend section 1.603 by revising the section heading to read as follows:

### 1.603 Selection, appointment, and termination of appointment for contracting officers.

\* \* \* \* \*

- 4. Add section 1.604 to read as follows:

### 1.604 Contracting Officer's Representative (COR).

A contracting officer's representative (COR) assists in the technical monitoring or administration of a contract (see 1.602-2(d)). The COR shall maintain a file for each assigned contract. The file must include, at a minimum—

(a) A copy of the contracting officer's letter of designation and other documents describing the COR's duties and responsibilities;

(b) A copy of the contract administration functions delegated to a contract administration office which may not be delegated to the COR (see 1.602-2(d)(4)); and

(c) Documentation of COR actions taken in accordance with the delegation of authority.

## PART 2—DEFINITIONS OF WORDS AND TERMS

- 5. Amend section 2.101 in paragraph (b)(2) by adding, in alphabetical order, the definition "Contracting officer's representative (COR)" to read as follows:

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## 2.101 Definitions.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

*Contracting officer's representative (COR)* means an individual, including a contracting officer's technical representative (COTR), designated and authorized in writing by the contracting officer to perform specific technical or administrative functions.

\* \* \* \* \*

## PART 7—ACQUISITION PLANNING

■ 6. Amend section 7.102 by adding paragraph (a)(3) to read as follows:

### 7.102 Policy.

(a) \* \* \*

(3) Selection of appropriate contract type in accordance with part 16.

\* \* \* \* \*

■ 7. Amend section 7.103 by—

- a. Redesignating paragraphs (e) through (w) as paragraphs (g) through (y);
- b. Redesignating paragraph (d) as paragraph (e);
- c. Adding a new paragraph (d);
- d. Revising newly redesignated paragraph (e);
- e. Adding a new paragraph (f); and
- f. Revising newly redesignated paragraph (j).

The added and revised text reads as follows:

### 7.103 Agency-head responsibilities.

\* \* \* \* \*

(d) Ensuring that acquisition planners document the file to support the selection of the contract type in accordance with subpart 16.1.

(e) Establishing criteria and thresholds at which increasingly greater detail and formality in the planning process is required as the acquisition becomes more complex and costly, including for cost-reimbursement and other high-risk contracts (e.g., other than firm-fixed-price contracts) requiring a written acquisition plan. A written plan shall be prepared for cost reimbursement and other high-risk contracts other than firm-fixed-price contracts, although written plans may be required for firm-fixed-price contracts as appropriate.

(f) Ensuring that the statement of work is closely aligned with performance outcomes and cost estimates.

\* \* \* \* \*

(j) Reviewing and approving acquisition plans and revisions to these plans to ensure compliance with FAR requirements including 7.104 and part 16. For other than firm-fixed-price contracts, ensuring that the plan is

approved and signed at least one level above the contracting officer.

\* \* \* \* \*

■ 8. Amend section 7.104 by adding paragraph (e) to read as follows:

### 7.104 General procedures.

\* \* \* \* \*

(e) The planner shall ensure that a COR is nominated by the requirements official, and designated and authorized by the contracting officer, as early as practicable in the acquisition process. The contracting officer shall designate and authorize a COR as early as practicable after the nomination. *See* 1602-2(d).

■ 9. Amend section 7.105 by—

- a. Removing from the first sentence of the introductory text the words “*see* paragraph (b)(19)” and adding the words “*see* paragraph (b)(21)” in their place;
- b. Redesignating paragraphs (b)(3) through (b)(21) as paragraphs (b)(4) through (b)(22), respectively;
- c. Adding a new paragraph (b)(3);
- d. Removing from newly redesignated paragraph (b)(5)(i) the words “contract type selection (*see* part 16);”;
- e. Removing from newly redesignated paragraph (b)(5)(ii)(A) the words “*see* 7.103(t)” and adding the words “*see* 7.103(v)” in its place; and
- f. Adding paragraph (b)(5)(iv).

The added text reads as follows:

### 7.105 Contents of written acquisition plans.

\* \* \* \* \*

(b) \* \* \*

(3) *Contract type selection.* Discuss the rationale for the selection of contract type. For other than firm-fixed-price contracts, *see* 16.103(d) for additional documentation guidance. Acquisition personnel shall document the acquisition plan with findings that detail the particular facts and circumstances, (e.g., complexity of the requirements, uncertain duration of the work, contractor's technical capability and financial responsibility, or adequacy of the contractor's accounting system), and associated reasoning essential to support the contract type selection. The contracting officer shall ensure that requirements and technical personnel provide the necessary documentation to support the contract type selection.

\* \* \* \* \*

(5) \* \* \*

(iv) For each contract (and order) contemplated, discuss the strategy to transition to firm-fixed-price contracts to the maximum extent practicable. During the requirements development stage, consider structuring the contract

requirements, e.g., contract line items (CLINs), in a manner that will permit some, if not all, of the requirements to be awarded on a firm-fixed-price basis, either in the current contract, future option years, or follow-on contracts. This will facilitate an easier transition to a firm-fixed-price contract because a cost history will be developed for a recurring definitive requirement.

\* \* \* \* \*

## PART 16—TYPES OF CONTRACTS

■ 10. Amend section 16.103 by revising paragraphs (d)(1) and (2) to read as follows:

### 16.103 Negotiating contract type.

\* \* \* \* \*

(d) \* \* \*

(1) Each contract file shall include documentation to show why the particular contract type was selected. This shall be documented in the acquisition plan, or if a written acquisition plan is not required, in the contract file.

(i) Explain why the contract type selected must be used to meet the agency need.

(ii) Discuss the Government's additional risks and the burden to manage the contract type selected (e.g., when a cost-reimbursement contract is selected, the Government incurs additional cost risks, and the Government has the additional burden of managing the contractor's costs). For such instances, acquisition personnel shall discuss—

(A) How the Government identified the additional risks (e.g., pre-award survey, or past performance information);

(B) The nature of the additional risks (e.g., inadequate contractor's accounting system, weaknesses in contractor's internal control, non-compliance with Cost Accounting Standards, or lack of or inadequate earned value management system); and

(C) How the Government will manage and mitigate the risks.

(iii) Discuss the Government resources necessary to properly plan for, award, and administer the contract type selected (e.g., resources needed and the additional risks to the Government if adequate resources are not provided).

(iv) For other than a firm-fixed price contract, at a minimum the documentation should include—

(A) An analysis of why the use of other than a firm-fixed-price contract (e.g., cost reimbursement, time and materials, labor hour) is appropriate;

(B) Rationale that detail the particular facts and circumstances (e.g.,

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complexity of the requirements, uncertain duration of the work, contractor's technical capability and financial responsibility, or adequacy of the contractor's accounting system), and associated reasoning essential to support the contract type selection;

(C) An assessment regarding the adequacy of Government resources that are necessary to properly plan for, award, and administer other than firm-fixed-price contracts; and

(D) A discussion of the actions planned to minimize the use of other than firm-fixed-price contracts on future acquisitions for the same requirement and to transition to firm-fixed-price contracts to the maximum extent practicable.

(v) A discussion of why a level-of-effort, price redetermination, or fee provision was included.

(2) Exceptions to the requirements at (d)(1) of this section are—

(i) Fixed-price acquisitions made under simplified acquisition procedures;

(ii) Contracts on a firm-fixed-price basis other than those for major systems or research and development; and

(iii) Awards on the set-aside portion of sealed bid partial set-asides for small business.

\* \* \* \*

- 11. Amend section 16.104 by—
- a. Redesignating paragraphs (e) through (k) as paragraphs (f) through (l), respectively;
- b. Adding a new paragraph (e);
- c. Removing from newly redesignated paragraph (f) the words “incentives to ensure” and adding the words “incentives tailored to performance outcomes to ensure” in their place;
- d. Removing from newly redesignated paragraph (g) the words “price adjustment terms” and adding the words “price adjustment or price redetermination clauses” in their place; and
- e. Revising newly redesignated paragraph (i).

The added and revised text reads as follows:

#### 16.104 Factors in selecting contract types.

\* \* \* \*

(e) *Combining contract types.* If the entire contract cannot be firm-fixed-price, the contracting officer shall consider whether or not a portion of the contract can be established on a firm-fixed-price basis.

\* \* \* \*

(i) *Adequacy of the contractor's accounting system.* Before agreeing on a contract type other than firm-fixed-price, the contracting officer shall

ensure that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the proposed contract type. This factor may be critical—

(1) When the contract type requires price revision while performance is in progress; or

(2) When a cost-reimbursement contract is being considered and all current or past experience with the contractor has been on a fixed-price basis. See 42.302(a)(12).

\* \* \* \*

■ 12. Revise section 16.301-2 to read as follows:

#### 16.301-2 Application.

(a) The contracting officer shall use cost-reimbursement contracts only when—

(1) Circumstances do not allow the agency to define its requirements sufficiently to allow for a fixed-price type contract (see 7.105); or

(2) Uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

(b) The contracting officer shall document the rationale for selecting the contract type in the written acquisition plan and ensure that the plan is approved and signed at least one level above the contracting officer (see 7.103(j) and 7.105). If a written acquisition plan is not required, the contracting officer shall document the rationale in the contract file. *See also* 16.103(d).

■ 13. Amend section 16.301-3 by revising paragraph (a) to read as follows:

#### 16.301-3 Limitations.

(a) A cost-reimbursement contract may be used only when—

(1) The factors in 16.104 have been considered;

(2) A written acquisition plan has been approved and signed at least one level above the contracting officer;

(3) The contractor's accounting system is adequate for determining costs applicable to the contract; and

(4) Adequate Government resources are available to award and manage a contract other than firm-fixed-priced (see 7.104(e)) including—

(i) Designation of at least one contracting officer's representative (COR) qualified in accordance with 1.602-2 has been made prior to award of the contract or order; and

(ii) Appropriate Government surveillance during performance to provide reasonable assurance that efficient methods and effective cost controls are used.

\* \* \* \*

## PART 32—CONTRACT FINANCING

### 32.1007 [Amended]

■ 14. Amend section 32.1007 by removing from paragraph (a) “(see 42.302(a)(12))” and adding “(see 42.302(a)(13))” in its place.

## PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

### 42.302 Contract administration functions.

(a) \* \* \*

(12) Determine the adequacy of the contractor's accounting system. The contractor's accounting system should be adequate during the entire period of contract performance. The adequacy of the contractor's accounting system and its associated internal control system, as well as contractor compliance with the Cost Accounting Standards (CAS), affect the quality and validity of the contractor data upon which the Government must rely for its management oversight of the contractor and contract performance.

\* \* \* \*

## PART 50—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

### 50.205-1 [Amended]

■ 16. Amend section 50.205-1 by removing from the first sentence in paragraph (b) the words “(see FAR 7.105(b)(19)(v))” and adding the words “(see 7.105(b)(20)(v))” in their place.

[FR Doc. 2011-5552 Filed 3-15-11; 8:45 am]

BILLING CODE 6820-EP-P

## Appendix C

### Contract Compliance with Interim Rule Requirements (Base Documentation Applies to Orders)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value (\$)
1	W9124A-11-C-0006		Fort Huachuca	Yes	Yes	Yes	Yes	No	5,976,036
2	W9124A-12-C-0002		Fort Huachuca	Yes	Yes	Yes	Yes	No	3,149,053.65
3	W9128Z-11-D-0006	0002	Fort Huachuca	Yes	Yes	No	Yes	Yes	769,096.62
4	W9128Z-11-D-0005	0004	Fort Huachuca	Yes	Yes	No	Yes	Yes	0
5	W9128Z-11-D-0006	0004	Fort Huachuca	Yes	Yes	No	Yes	Yes	6,091,754.52
6	W9128Z-11-D-0005	0008	Fort Huachuca	Yes	Yes	No	Yes	Yes	171,000
7	W9128Z-11-C-0003		Fort Huachuca	No	Yes	No	No	No	1,925,506.51
8	W9128Z-11-D-0005		Fort Huachuca	Yes	Yes	Yes	Yes	Yes	892,000,000
9	W9128Z-11-D-0006		Fort Huachuca	Yes	Yes	Yes	Yes	Yes	892,000,000
10	W9128Z-11-D-0007		Fort Huachuca	Yes	Yes	Yes	Yes	Yes	892,000,000
11	W91QUZ-07-D-0005	Y601	Fort Huachuca	No	No	No	No	No	8,801,098
12	W91RUS-10-D-0001	0003	Fort Huachuca	Yes	Yes	Yes	Yes	No	357,867
13	W91RUS-11-D-5001	0026	Fort Huachuca	Yes	Yes	Yes	Yes	No	1,398,910.15
14	W91RUS-11-C-0010		Fort Huachuca	Yes	Yes	Yes	Yes	Yes	486,354.00
15	W91RUS-11-C-0021		Fort Huachuca	Yes	Yes	No	No	No	1,859,220.15
16	W91RUS-12-C-0003		Fort Huachuca	Yes	Yes	No	Yes	Yes	8,673,854.34
17	W91RUS-12-C-0005		Fort Huachuca	Yes	Yes	Yes	Yes	No	4,801,622.41
18	W9128Z-11-C-5000		Fort Huachuca	Yes	Yes	Yes	Yes	Yes	377,816,773.74
	<b>Fort Huachuca Subtotal:</b>			<b>16</b>	<b>17</b>	<b>10</b>	<b>15</b>	<b>10</b>	<b>3,098,278,147</b>

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

## Contract Compliance with Interim Rule Requirements (cont'd)

(Base Documentation Applies to Orders)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value (\$)
19	W911NF-07-D-0001	1062	Durham-APG	No	Yes	Yes	No	No	199,316.00
20	W911NF-12-C-0004		Durham-APG	No	Yes	Yes	Yes	No	516,536.00
21	W911NF-11-C-0099		Durham-APG	No	No	No	No	No	714,344.00
22	W911NF-11-C-0101		Durham-APG	No	Yes	No	Yes	No	130,000.00
23	W911NF-08-D-0002	0026	Durham-APG	No	Yes	Yes	Yes	Yes	175,000.00
24	W911NF-09-D-0006	0003	Durham-APG	No	Yes	Yes	Yes	No	224,588.00
25	W91CRB-11-D-0004	0001	Durham-APG	No	Yes	Yes	Yes	No	271,848.00
26	W91CRB-11-D-0001	0002	Durham-APG	No	Yes	Yes	Yes	No	284,602.00
27	W911NF-11-D-0003	0003	Durham-APG	No	Yes	Yes	Yes	Yes	344,053.00
28	W91CRB-11-D-0006	0002	Durham-APG	Yes	Yes	Yes	Yes	Yes	454,144.00
29	W911NF-11-C-0090		Durham-APG	No	Yes	Yes	Yes	Yes	466,282.00
30	W911NF-11-C-0081		Durham-APG	No	Yes	Yes	Yes	Yes	454,968.00
31	W911NF-12-C-0007		Durham-APG	No	Yes	Yes	Yes	Yes	369,146.00
32	W911NF-11-C-0073		Durham-APG	No	Yes	Yes	Yes	Yes	744,252.00
33	W911NF-11-C-0256		Durham-APG	Yes	Yes	Yes	Yes	No	747,231.00
34	W911NF-11-C-0032		Durham-APG	No	Yes	Yes	No	Yes	749,769.00
35	W911NF-11-C-0074		Durham-APG	No	Yes	Yes	Yes	Yes	749,988.00
36	W911NF-11-C-0213		Durham-APG	No	Yes	No	No	No	760,092.00
37	W911NF-12-C-0018		Durham-APG	Yes	Yes	Yes	Yes	No	860,505.00

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

## Contract Compliance with Interim Rule Requirements (cont'd)

(Base Documentation Applies to Orders)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value (\$)
38	W911NF-11-C-0084		Durham-APG	No	Yes	Yes	No	Yes	1,374,644.00
39	W911NF-11-C-0069		Durham-APG	No	Yes	Yes	Yes	Yes	1,597,946.00
40	W911NF-11-C-0268		Durham-APG	No	Yes	Yes	Yes	Yes	1,745,008.00
41	W911NF-11-C-0201		Durham-APG	No	Yes	No	Yes	Yes	1,996,698.00
42	W911NF-11-C-0216		Durham-APG	No	Yes	Yes	Yes	Yes	2,914,695.00
43	W911NF-11-C-0273		Durham-APG	No	Yes	Yes	Yes	Yes	3,046,315.00
44	W911NF-11-C-0214		Durham-APG	No	Yes	Yes	Yes	Yes	3,491,613.00
45	W911NF-12-C-0001		Durham-APG	No	Yes	Yes	Yes	Yes	3,499,176.00
46	W911NF-11-C-0087		Durham-APG	Yes	Yes	No	No	Yes	3,560,000.00
47	W911NF-11-C-0266		Durham-APG	No	Yes	Yes	Yes	Yes	3,605,985.00
48	W911NF-11-C-0200		Durham-APG	No	Yes	Yes	Yes	Yes	4,789,938.00
49	W911NF-11-C-0252		Durham-APG	Yes	Yes	Yes	Yes	Yes	5,140,811.00
50	W911NF-12-C-0011		Durham-APG	No	Yes	Yes	Yes	Yes	6,409,096.00
51	W911NF-11-C-0261		Durham-APG	Yes	Yes	Yes	Yes	Yes	8,486,142.00
52	W911NF-12-C-0028		Durham-APG	No	Yes	Yes	Yes	Yes	8,987,156.00
53	W911NF-11-C-0088		Durham-APG	No	Yes	Yes	Yes	Yes	9,049,949.00
54	W911NF-12-C-0002		Durham-APG	No	Yes	Yes	Yes	Yes	9,975,201.00
55	W911NF-11-C-0210		Durham-APG	No	Yes	Yes	Yes	Yes	15,844,650.00
56	W911NF-11-D-0002		Durham-APG	Yes	Yes	No	Yes	Yes	34,077,057.00

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

## Contract Compliance with Interim Rule Requirements (cont'd)

(Base Documentation Applies to Orders)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value (\$)
57	W911NF-12-C-0037		Durham-APG	Yes	Yes	Yes	Yes	Yes	76,686,339.00
58	W911NF-11-D-0001		Durham-APG	Yes	Yes	Yes	Yes	Yes	94,000,000.00
59	W911NF-12-C-0017		Durham-APG	No	Yes	Yes	No	Yes	749,894.00
60	W911NF-11-C-0052		Durham-APG	No	Yes	Yes	Yes	Yes	749,939.00
61	W911NF-12-C-0010		Durham-APG	No	Yes	Yes	Yes	Yes	742,789.00
62	W911NF-11-C-0080		Durham-APG	No	Yes	Yes	Yes	Yes	749,480.00
63	W911NF-12-C-0019		Durham-APG	No	Yes	Yes	Yes	Yes	826,927.00
64	W911NF-11-C-0215		Durham-APG	No	Yes	Yes	Yes	Yes	2,495,998.00
65	W911NF-11-C-0253		Durham-APG	Yes	Yes	Yes	Yes	Yes	749,822.00
66	W911NF-11-C-0070		Durham-APG	No	Yes	Yes	Yes	Yes	744,048.00
67	W911NF-12-C-0016		Durham-APG	No	Yes	Yes	Yes	Yes	349,708.00
<b>Durham-APG Subtotal:</b>				<b>10</b>	<b>48</b>	<b>43</b>	<b>42</b>	<b>39</b>	<b>318,794,688</b>
68	W911W4-08-D-0002	0023	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	337,382
69	W911W4-08-D-0002	0024	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	410,959
70	W911W4-08-D-0002	0025	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	2,966,043
71	W911W4-08-D-0002	0026	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	184,695,893
72	W911W4-08-D-0002	0027	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	8,474,717
73	W911W4-08-D-0002	0028	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	7,901,371
74	W911W4-08-D-0002	0029	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	9,936,479

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

## Contract Compliance with Interim Rule Requirements (cont'd)

(Base Documentation Applies to Orders)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value (\$)
75	W911W4-08-D-0002	0030	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	2,566,466
76	W911W4-08-D-0002	0031	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	16,231,525
77	W911W4-08-D-0002	0032	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	8,944,869
78	W911W4-11-D-0007		Fort Belvoir	Yes	Yes	Yes	Yes	Yes	9,700,000,000
79	W911W4-10-D-0020	0002	Fort Belvoir	No	No	No	Yes	No	22,721,311
80	W911W4-07-D-0002	0014	Fort Belvoir	Yes	No	No	Yes	Yes	13,793,968
81	W911W4-07-D-0002	0015	Fort Belvoir	Yes	No	No	Yes	Yes	189,234
82	W911W4-08-D-0001	0154	Fort Belvoir	No	No	No	Yes	No	337,044
83	W911W4-09-D-0001	0021	Fort Belvoir	Yes	Yes	No	Yes	Yes	138,394,162
84	W911W4-09-D-0001	0022	Fort Belvoir	Yes	Yes	No	Yes	Yes	3,015,855
85	W911W4-09-D-0001	0023	Fort Belvoir	Yes	Yes	No	Yes	Yes	16,241,460
86	W911W4-11-D-0005		Fort Belvoir	Yes	Yes	Yes	Yes	Yes	9,700,000,000
87	W911W4-11-D-0008		Fort Belvoir	Yes	Yes	Yes	Yes	Yes	9,700,000,000
88	W911W4-11-D-0003		Fort Belvoir	Yes	Yes	Yes	Yes	Yes	9,700,000,000
89	W911W4-11-D-0004		Fort Belvoir	Yes	Yes	Yes	Yes	No	9,700,000,000
90	W911W4-07-D-0010	0085	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	19,909,612
91	W911W4-07-D-0010	0069	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	2,887,224
92	W911W4-07-D-0010	0070	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	18,073,726
93	W911W4-07-D-0010	0074	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	330,475

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

## Contract Compliance with Interim Rule Requirements (cont'd)

(Base Documentation Applies to Orders)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value (\$)
94	W911W4-07-D-0010	0077	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	955,848
95	W911W4-07-D-0010	0078	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	8,965,872
96	W911W4-07-D-0010	0079	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	387,729
97	W911W4-07-D-0010	0080	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	315,864
98	W911W4-07-D-0010	0081	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	788,693
99	W911W4-07-D-0010	0082	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	4,400,973
100	W911W4-07-D-0010	0083	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	2,894,904
101	W911W4-07-D-0010	0084	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	3,127,989
102	W911W4-07-D-0010	0086	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	1,595,032
103	W911W4-07-D-0010	0087	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	790,087
104	W911W4-07-D-0010	0088	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	1,539,559
105	W911W4-07-D-0010	0089	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	7,171,127
106	W911W4-07-D-0010	0090	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	389,509
107	W911W4-07-D-0010	0091	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	297,715
108	W911W4-07-D-0010	0092	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	223,859
109	W911W4-07-D-0010	0093	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	296,812,744
110	W911W4-07-D-0010	0094	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	749,273
111	W911W4-07-D-0010	0095	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	2,658,724
112	W911W4-07-D-0010	0096	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	2,711,815

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

## Contract Compliance with Interim Rule Requirements (cont'd)

(Base Documentation Applies to Orders)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value (\$)
113	W911W4-07-D-0010	0098	Fort Belvoir	Yes	Yes	Yes	Yes	Yes	1,578,618
	<b>Fort Belvoir Subtotal:</b>			<b>44</b>	<b>42</b>	<b>39</b>	<b>46</b>	<b>43</b>	<b>49,316,715,710</b>
114	W9113M-11-C-0054		Redstone Arsenal	No	No	No	Yes	No	908,000
115	W31P4Q-11-C-0183		Redstone Arsenal	Yes	Yes	Yes	Yes	Yes	39,331,099
116	W31P4Q-11-C-0155		Redstone Arsenal	Yes	Yes	No	Yes	No	685,768
117	W58RGZ-11-C-0161		Redstone Arsenal	Yes	Yes	No	Yes	Yes	834,379
118	W31P4Q-11-C-0163		Redstone Arsenal	No	No	No	Yes	Yes	729,997
119	W31P4Q-12-C-0068		Redstone Arsenal	No	No	No	Yes	Yes	2,084,849
120	W9113M-11-C-0037		Redstone Arsenal	No	No	No	Yes	Yes	1,874,980
121	W9113M-11-C-0036		Redstone Arsenal	No	No	No	Yes	Yes	757,107
122	W9113M-11-C-0087		Redstone Arsenal	No	No	Yes	No	No	498,883
123	W9113M-11-C-0086		Redstone Arsenal	No	No	Yes	No	No	499,909
124	W9113M-11-C-0084		Redstone Arsenal	No	No	Yes	No	Yes	409,752
125	W9113M-11-C-0082		Redstone Arsenal	No	No	No	Yes	Yes	18,833,652
126	W9113M-11-C-0080		Redstone Arsenal	Yes	Yes	No	Yes	Yes	4,497,341
127	W9113M-11-C-0054		Redstone Arsenal	Yes	No	No	Yes	Yes	908,000
128	W9113M-11-C-0044		Redstone Arsenal	Yes	Yes	No	Yes	Yes	20,008,586
129	W31P4Q-11-C-0040		Redstone Arsenal	No	No	No	Yes	Yes	749,998
130	W58RGZ-12-C-0046		Redstone Arsenal	Yes	Yes	Yes	Yes	Yes	29,067,438

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

## Contract Compliance with Interim Rule Requirements (cont'd)

(Base Documentation Applies to Orders)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value (\$)
131	W58RGZ-12-C-0045		Redstone Arsenal	Yes	Yes	Yes	Yes	Yes	29,816,046
132	W58RGZ-11-C-0093		Redstone Arsenal	Yes	No	No	Yes	No	23,717,965
133	W9113M-11-C-0085		Redstone Arsenal	No	No	No	Yes	Yes	428,095
134	W9113M-12-C-0005		Redstone Arsenal	Yes	No	No	Yes	No	9,495,200
135	W9113M-12-C-0003		Redstone Arsenal	No	Yes	No	Yes	Yes	752,349
136	W58RGZ-11-D-0316		Redstone Arsenal	Yes	Yes	No	Yes	Yes	152,902
137	W58RGZ-11-D-0304		Redstone Arsenal	Yes	Yes	No	Yes	Yes	510,453
138	W9113M-12-C-0006		Redstone Arsenal	No	No	No	Yes	Yes	781,338
139	W31P4Q-12-C-0019		Redstone Arsenal	Yes	No	No	Yes	Yes	2,124,385
140	W58RGZ-12-C-0026		Redstone Arsenal	No	Yes	No	No	Yes	1,034,202
141	W31P4Q-12-C-0027		Redstone Arsenal	Yes	No	No	Yes	Yes	1,439,542
142	W31P4Q-11-C-0020		Redstone Arsenal	Yes	No	No	Yes	Yes	729,924
143	W31P4Q-10-D-0092	0035	Redstone Arsenal	Yes	Yes	No	Yes	Yes	199,999
144	W31P4Q-10-D-0072	0010	Redstone Arsenal	Yes	Yes	No	Yes	Yes	653,401
145	W31P4Q-12-C-0029		Redstone Arsenal	Yes	Yes	No	Yes	Yes	279,364,696
146	W58RGZ-09-D-0130	0123	Redstone Arsenal	No	Yes	No	Yes	No	500,000
147	W31P4Q-12-C-0091		Redstone Arsenal	Yes	No	No	Yes	Yes	974,293
148	W31P4Q-11-D-0019	0008	Redstone Arsenal	Yes	Yes	Yes	Yes	No	3,763,119
149	W58RGZ-11-D-0145		Redstone Arsenal	Yes	Yes	Yes	No	Yes	4,305,984

Acronyms used throughout Appendix C are defined on the final page of Appendix C.

## Contract Compliance with Interim Rule Requirements (cont'd)

(Base Documentation Applies to Orders)

	Contract Number	Order Number (if applicable)	Site Location	Approval	Justification	Transition	Monitoring	Accounting System	Not-To-Exceed CR Value (\$)
150	W58RGZ-11-D-0301		Redstone Arsenal	Yes	Yes	Yes	Yes	Yes	607,585
151	W31P4Q-11-C-0230		Redstone Arsenal	No	No	No	Yes	Yes	370,144
152	W31P4Q-11-C-0226		Redstone Arsenal	No	No	No	Yes	Yes	716,690
153	W31P4Q-11-C-0206		Redstone Arsenal	Yes	No	Yes	Yes	No	10,353,485
154	W31P4Q-12-C-0106		Redstone Arsenal	Yes	No	No	No	No	571,960
155	W31P4Q-11-C-0054		Redstone Arsenal	Yes	No	No	Yes	Yes	749,054
156	W31P4Q-11-C-2011		Redstone Arsenal	Yes	No	No	Yes	Yes	702,531
157	W31P4Q-11-C-0237		Redstone Arsenal	Yes	No	No	Yes	Yes	736,316
158	W9113M-11-D-0004	0003	Redstone Arsenal	Yes	Yes	Yes	Yes	No	728,042
159	W31P4Q-09-D-0010	0155	Redstone Arsenal	Yes	No	No	Yes	Yes	175,000
160	W31P4Q-09-D-0018	0007	Redstone Arsenal	No	No	No	No	No	1,592,475
161	W9113M-07-D-0008	0025	Redstone Arsenal	Yes	Yes	Yes	Yes	Yes	41,553,247
<b>Redstone Arsenal Subtotal:</b>				<b>30</b>	<b>20</b>	<b>12</b>	<b>41</b>	<b>36</b>	<b>542,280,160</b>
	<b>Total of All Compliant Contracts:</b>			<b>100</b>	<b>127</b>	<b>104</b>	<b>144</b>	<b>128</b>	
	<b>Total of All Non-Compliant Contracts</b>			<b>61</b>	<b>34</b>	<b>57</b>	<b>17</b>	<b>33</b>	
	<b>Total CR Value of All Contracts Reviewed</b>								<b>53,276,068,705</b>

<u>Legend</u>	
APG	Aberdeen Proving Ground
CR	Cost Reimbursement

# Management Comments

## Assistant Secretary of the Army for Acquisition, Logistics, and Technology Comments



DEPARTMENT OF THE ARMY  
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY  
ACQUISITION LOGISTICS AND TECHNOLOGY  
103 ARMY PENTAGON  
WASHINGTON DC 20310-0103

JUL 24 2013

SAAL-PP

MEMORANDUM FOR DEPARTMENT OF DEFENSE, OFFICE OF THE INSPECTOR  
GENERAL, 4800 MARK CENTER DRIVE, ALEXANDRIA, VIRGINIA 22350-1500

SUBJECT: Department of Defense Inspector General (DODIG) Draft Report, Army  
Needs Better Processes to Justify and Manage Cost-Reimbursement Contracts (Project  
No. D2013-D000CG-0102.000)

1. On behalf of the Assistant Secretary of the Army for Acquisition, Logistics, and  
Technology, I am providing responses to the recommendations contained in the subject  
draft report.
2. After reviewing the report, I concur with three recommendations, and concur with  
comments on one additional recommendation. The enclosure summarizes this  
response.
3. My point of contact for this action is [REDACTED]  
[REDACTED]

Encl

Harry P. Hallock  
Deputy Assistant Secretary  
of the Army (Procurement)

## Assistant Secretary of the Army for Acquisition, Logistics, and Technology Comments (cont'd)

Inspector General, Department of Defense  
Project No. D2013-D000CG-0102.000, June 24, 2013

### Army Needs Better Processes to Justify and Manage Cost-Reimbursement Contracts

#### Recommendation 1a

We recommend that the Assistant Secretary of the Army for Acquisition, Logistics, and Technology (ASA(ALT)) emphasize the importance of the Federal Acquisition Regulation revisions to contracting personnel for the use of cost-reimbursement contracts in guidance and training courses.

**Concur:** The Office of the Deputy Assistant Secretary of the Army (Procurement) [ODASA(P)] will issue an alert to the Heads of the Contracting Activity and Principal Assistants Responsible for Contracting no later than October 30, 2013 reminding contracting personnel of the importance of complying with the Federal Acquisition Regulation (FAR) revisions regarding the use of cost-reimbursement contracts.

Contracting personnel will also be reminded of the Army's guidance regarding adherence to DOD Better Buying Power 2.0 (BBP 2.0) directives as prescribed in the June 19, 2013 Office of the Assistant Secretary of the Army, Acquisition Logistics and Technology memorandum, "Implementation Directive for Better Buying Power 2.0 – Achieving Greater Efficiency and Productivity in Defense Spending." Specifically, the Policy Alert will emphasize the importance of BBP 2.0 Initiative "Employ appropriate contract types" under focus area "Incentive Productivity & Innovation in Industry and Government".

#### Recommendation 1b

We recommend that the ASA(ALT) update the "Justification of Contract Type and Incentive Strategies," January 8, 2012 memorandum to eliminate the dollar threshold for cost type contracts to align with the interim rule and address the other three areas of the interim rule.

**Concur with Comment:** The Army will revisit the January 8, 2012 memorandum titled "Justification of Contract Type and Incentive Strategies" to reassess the dollar threshold for cost type contracts. During the threshold reassessment, the Army will also address the following three procedural items prescribed by the FAR interim rules: (a) circumstances when cost-reimbursement contracts are appropriate; (b) identification of acquisition plan findings to support the selection of a cost-reimbursement contract; and (c) acquisition and requirement agency workforce resources necessary to award and ultimately manage a cost-reimbursement contract.

## Assistant Secretary of the Army for Acquisition, Logistics, and Technology Comments (cont'd)

Inspector General, Department of Defense  
Project No. D2013-D000CG-0102.000, June 24, 2013

### Army Needs Better Processes to Justify and Manage Cost-Reimbursement Contracts

#### **Recommendation 1c**

We recommend that the Assistant Secretary of the Army for Acquisition, Logistics, and Technology promote the issuance of more hybrid contracts that contain multiple line items for the same service or item with different price structure so that contract type can be selected on each task or delivery order.

**Concur:** The Army recognizes the FAR grants the contracting officer measured authority and flexibility in business and technical judgment to execute the procurement function. As a member of the acquisition team, the contracting officer serves as the contracting business advisor in the execution of the contracting functions. Along with this responsibility comes guidance prescribed by the Federal Acquisition System. FAR 1.602-2 grants the contracting officer wide latitude to exercise business judgment in order to ensure performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships. The contracting officers must purchase supplies and services from responsible sources at fair and reasonable prices.

As enumerated in DOD Better Buying Power 2.0 (BBP 2.0) guidance, the contract type or hybrid contract employed must be tailored to each particular product or service acquisition. Acquisition officials are encouraged to consider the full range of contract types before deciding on an acquisition approach. The use of a specific contract type or hybrid contract should be governed by the acquisition situation, including the nature of the work and deliverables being placed on contract. An appropriate allocation of risk between Government and industry is one major factor and must take into account industry's ability to absorb risk.

ODASA(P) will issue a Policy Alert no later than October 30, 2013 reminding contracting personnel of the Army's guidance regarding BBP 2.0 directives as prescribed in the June 19, 2013 Office of the Assistant Secretary of the Army, Acquisition Logistics and Technology memorandum, "Implementation Directive for Better Buying Power 2.0 – Achieving Greater Efficiency and Productivity in Defense Spending." Specifically, the Policy Alert will emphasize the importance of the intent and guidance of BBP 2.0 Initiative "Employ appropriate contract types" under focus area "Incentive Productivity & Innovation in Industry and Government."

## Assistant Secretary of the Army for Acquisition, Logistics, and Technology Comments (cont'd)

Inspector General, Department of Defense  
Project No. D2013-D000CG-0102.000, June 24, 2013

### Army Needs Better Processes to Justify and Manage Cost-Reimbursement Contracts

#### Recommendation 1d

We recommend that the Assistant Secretary of the Army for Acquisition, Logistics, and Technology establish better communication channels between the requiring component, contracting personnel, and contract monitors to more effectively identify opportunities to transition away from cost-reimbursement contracts when possible.

**Concur:** In an effort to establish better communication channels between the requiring component, contracting personnel, and contract monitors to more effectively identify opportunities to transition away from cost-reimbursement contracts when possible, the Office of the ASA(ALT) issued the June 19, 2013 memorandum, "Implementation Directive for Better Buying Power 2.0 – Achieving Greater Efficiency and Productivity in Defense Spending," to

- (1) Direct each Program Executive Officer (PEO) and PARC to personally ensure that all members of their organization are knowledgeable and engaged in the implementation of BBP 2.0;
- (2) Assign each Deputy Assistant Secretary of the Army (DASA) as a responsible official to provide direction and information to facilitate timely execution of the prescribed initiatives.

The Army believes the ASA(ALT) directive to the acquisition community opens the communication channels across the contracting enterprise and fully supports BBP 2.0 initiative "Continue to increase the cost consciousness of the acquisition workforce – change the culture" under BBP 2.0 focus area "Improve the professionalism of the total acquisition workforce."

The Army fully supports the principles and goals of Better Buying Power 2.0 (BBP 2.0) and the collective effort to achieve greater efficiency and productivity in defense spending. The Army endorses DOD's position that BBP 2.0 represents a management philosophy of continuous improvement in our acquisition practices, and recognizes that an underlying premise of BBP 2.0 is the ability to get better value for each dollar spent in procurement of goods and services.

## Army Materiel Command Comments



REPLY TO  
ATTENTION OF:

**DEPARTMENT OF THE ARMY**  
HEADQUARTERS, U.S. ARMY MATERIEL COMMAND  
4400 MARTIN ROAD  
REDSTONE ARSENAL, AL 35898-5000

AMCIR

JUL 25 2013

MEMORANDUM FOR Department of Defense Inspector General (DoDIG), ATTN: Acquisition and Contract Management ( [REDACTED] ), [REDACTED]

SUBJECT: Command Comments on DoDIG Draft Report, Army Needs Better Processes to Justify and Manage Cost-Reimbursement Contracts, Project D2013CG-0102

1. The US Army Materiel Command (AMC) has reviewed the subject draft report and the response from the US Army Contracting Command (ACC). AMC endorses the enclosed ACC response.
2. The AMC point of contact is [REDACTED]

Encl

  
JOHN B. NERGER  
Executive Deputy to the  
Commanding General

## Army Materiel Command Comments (cont'd)



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
U.S. ARMY CONTRACTING COMMAND  
3334A WELLS ROAD  
REDSTONE ARSENAL, AL 35898-5000

19 JUL 2013

AMSCC-IR

MEMORANDUM FOR [REDACTED], Director, Internal Review and Audit  
Compliance Office, Headquarters, U.S. Army Materiel Command, [REDACTED]

SUBJECT: Draft Report on the Audit of Army Contracting Command – Army Needs  
Better Processes to Justify and Manage Cost-Reimbursement Contracts (Project No.  
D2013-D000CG-0102.000) (D1353) (932)

1. Memorandum and Audit Report, 24 June 2013, subject: Draft Report on the Audit of Army Contracting Command – Army Needs Better Processes to Justify and Manage Cost-Reimbursement Contracts (Project No. D2013-D000CG-0102.000).
2. The Army Contracting Command (ACC) concurs with the enclosed comments provided by ACC-Redstone Arsenal (RSA) and ACC-Aberdeen Proving Ground (APG).
3. The ACC point of contact is [REDACTED], Internal Review and Audit  
Compliance Office, [REDACTED]

  
CAMILLE M. NICHOLS  
Major General, USA  
Commanding

Encls

## Army Materiel Command Comments (cont'd)



DEPARTMENT OF THE ARMY  
ARMY CONTRACTING COMMAND - REDSTONE  
BUILDING 5303 MARTIN ROAD  
REDSTONE ARSENAL, ALABAMA 35898-5000

CCAM-PSP

10 July 2013

MEMORANDUM FOR [REDACTED], Internal Review and Audit Compliance  
Office, U.S. Army Contracting Command, [REDACTED]

SUBJECT: Army Contracting Command – Redstone Response to DoD OIG Draft Audit Report, June 24, 2013, Entitled "Army Needs Better Processes to Justify and Manage Cost-Reimbursement Contracts" DoDIG Project D2013-D000CG-0102.000

1. The Army Contracting Command-Redstone provides the subject enclosed response.
2. The subject response has been reviewed for the inclusion of For Official Use Only (FOUO) information and has been appropriately marked to identify such information.
3. The point of contact for this action is [REDACTED], CCAM-PSP, [REDACTED]

Encl

  
JAN B. KLINKHAMMER  
COL, Aviation  
Executive Director, ACC-RSA

## Army Materiel Command Comments (cont'd)

Army Contracting Command – Redstone  
Response to  
DoD OIG Draft Audit Report, June 24, 2013,  
Entitled "Army Needs Better Processes to Justify and  
Manage Cost-Reimbursement Contracts"  
DoDIG Project D2013-D000CG-0102.000

**Recommendation 2:** "We recommend that Director, Army Contracting Command Redstone, in an effort to meet the increased requirements before issuing a cost-reimbursement contract, establish procedures for contracting officers to document the possibility of transitioning to firm-fixed-price contracts in a Determination and Finding for Contract Type or a similar document each time a cost-reimbursement contract is used."

**Response:** Concur. The Director, Army Contracting Command – Redstone will establish procedures for contracting officers, before issuing a cost-reimbursement contract, to document, in accordance with Federal Acquisition Circular (FAC) 2005-50, the possibility of transitioning to firm-fixed-price contracts in a Determination and Finding for Contract Type or a similar document each time a cost-reimbursement contract is used. The new procedures will be established by 30 September 2013.

**IG Request to Comment on the Following:** "Review of Internal Controls - DoD Instruction 5010.40, 'Managers' Internal Control Program (MICP) Procedures,' July 29, 2010, requires DoD organizations to implement a comprehensive system of internal controls that provides reasonable assurance that programs are operating as intended and to evaluate the effectiveness of the controls. We identified internal control weaknesses for implementing the changes required by the interim rule regarding the use of cost-reimbursement contracts. The four sites visited did not always update local procedures or other guidance for issuing and administering cost-reimbursement contracts. Specifically, the Army did not always have procedures to approve or justify the use of cost-reimbursement contracts properly and did not always document the potential of cost-reimbursement contracts to transition to firm-fixed-price contracts. Additionally, the Army and other DoD components responsible for monitoring contractor accounting systems did not always verify the adequacy of the contractor's accounting system throughout the entire period of contract performance as required by the interim rule. We will provide a copy of the final report to the senior official in charge of internal controls in the Army."

**Response:** Concur. In addition to the corrective action addressed in our response to Recommendation 2, the Director, Army Contracting Command – Redstone, will address the weaknesses identified in the above paragraph by establishing procedures for contracting officers to document, before issuing a cost-reimbursement contract, all of the changes required by FAC 2005-50, regarding the use of cost-reimbursement contracts. The new procedures will be established by 30 September 2013.

## Army Materiel Command Comments (cont'd)



DEPARTMENT OF THE ARMY  
U.S. ARMY CONTRACTING COMMAND - ABERDEEN PROVING GROUND  
4401 BOOTHBY HILL AVENUE  
ABERDEEN PROVING GROUND, MD 21005-3013

REPLY TO  
ATTENTION OF

CCAP

8 July 2013

MEMORANDUM THRU [REDACTED], Army Contract Command Internal Review and Audit Compliance Office

FOR [REDACTED] [REDACTED], Program Director, Acquisition and Contract Management, Department of Defense Inspector General

SUBJECT: DoDIG Project No. D2013-D000CG-0102.000, Army Needs Better Processes to Justify and Manage Cost-Reimbursement Contracts

1. Army Contracting Command – Aberdeen Proving Ground (ACC-APG) comments on recommendations within subject draft report are enclosed.
2. Point of contact is [REDACTED], CCAP-OPC, [REDACTED].

Byron J. Young  
Executive Director

Encl

## Army Materiel Command Comments (cont'd)

### ARMY CONTRACTING COMMAND – ABERDEEN PROVING GROUND (ACC-APG) RESPONSE TO DODIG PROJECT NUMBER D2013-D000CG-0102.000

#### BACKGROUND

Section 864 of the FY 2009 National Defense Authorization Act requires FAR revisions regarding the documentation of decisions and approvals necessary before issuance of other than firm-fixed-price contracts. Moreover, the DoD Inspector General must audit DoD's compliance with the changes within 1 year of policy issuance.

Federal Acquisition Circular (FAC) 2005-50, issued March 16, 2011, implemented the required revisions on an interim basis. This interim rule was effective immediately and was not subject to public comment before issuance. FAC 2005-50 amended FAR Part 7, "Acquisition Planning," FAR Part 16, "Types of Contracts," and FAR Part 42, "Contract Administration and Audit Services." The final rule was published in the Federal Register on March 2, 2012, without significant changes that would affect the DoDIG's audit objectives.

The DoD Office of the Inspector General (DoDIG) evaluated 67 Army Contracting Command – Aberdeen Proving Ground (ACC-APG) contract actions, 18 from Ft. Huachuca and 49 from Research Triangle Park-Durham (RTP). The total contract value for the 67 contracts was \$3.4 billion. The purpose of the review was to determine whether Army contracting personnel implemented the interim rule by documenting:

- that the approval for the cost-reimbursement contract was at least one level above the contracting officer;
- the use of cost-reimbursement contracts was justified;
- how the requirements under the contract could transition to firm-fixed price in the future;
- that Government resources were available to monitor the cost-reimbursement contract; and
- that the contracts had an adequate accounting system in place during the entire contract.

DoDIG's findings stated that ACC-APG Ft. Huachuca contracting personnel failed to verify that an adequate accounting system was in place prior to award for 8 contracts, valued at about \$28.3 million, of the 18 contracts (see Appendix A). As a result, contracting personnel continue to issue cost-reimbursement contracts that may inappropriately increase the Army's contracting risks because cost-reimbursement contracts provide less incentive for contractors to control costs.

DoDIG issued a draft report to ACC-APG on 28 June 2013. DoDIG's draft report included one recommendation to the Director of Contracting, Fort Huachuca Army Contracting Command-Aberdeen Proving Ground.

## Army Materiel Command Comments (cont'd)

SUBJECT: ACC-APG Response to DoDIG Project No. D2013-D000CG-0102.000

DoDIG recommendation and ACC-APG's response are shown below:

**DRAFT REPORT RECOMMENDATION 3 FOR DIRECTOR OF CONTRACTING, ACC-APG FT. HUACHUCA**

Re-emphasize the requirement that contracting officers should determine that contractors have an adequate accounting system in place before issuing a cost-reimbursement contract.

**ACC-APG COMMENTS AND ACTION TAKEN**

Concur. Prior to awarding a cost-reimbursement contract, the contracting officer will ensure the contractor has an adequate accounting system in place. The Ft. Huachuca Division Chief of Contracting (COCO) has discussed this requirement with all Branch Chiefs and held an open discussion with all ACC-APG Ft. Huachuca contracting officers stressing the importance of the DoDIG finding. In addition, ACC-APG Ft. Huachuca has implemented measures to incorporate the requirement to address the contractor's accounting system in: 1) the Justification for Contract Type Determination; 2) the Acquisition Plan or Service Acquisition Strategy, where applicable; and 3) the Cost/Cost Realism Analysis Evaluation Factor as part of solicitation preparation.

The Ft. Huachuca Division Chief of Contracting has tasked the Division Procurement Analyst to review all newly awarded cost-reimbursement contracts in PCF for evidence of the Contracting Officer's determination that the accounting system was adequate. Lastly, the Ft. Huachuca COCO has tasked the Division Procurement Analyst to establish cost analysis training in fiscal year 2014 that would include guidance for communicating with DCAA or DCMA officials on cost accounting systems and instructions on how to properly document the contract file.

## Acronyms and Abbreviations

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**APG** Aberdeen Proving Ground

**ASA(ALT)** Assistant Secretary of the Army for Acquisition, Logistics, and Technology

**COR** Contracting Officer's Representative

**DCAA** Defense Contract Audit Agency

**FAC** Federal Acquisition Circular

**FAR** Federal Acquisition Regulation

**SBIR** Small Business Innovation Research

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## U.S. DEPARTMENT OF DEFENSE

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